

REDACTED PUBLIC VERSION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

**APPLICATION TO ASSIGN LICENSES FROM
MARITIME COMMUNICATIONS/LAND
MOBILE, LLC, DEBTOR-IN-POSSESSION, TO
CHOCTAW HOLDINGS, LLC**

)
)
) WT Docket No. 13-85
) File No. 0005552500
)
)
)

For Commission Consent to the Assignment of Various
AMTS Authorizations

To: The Commission

SUPPLEMENT TO PETITION FOR RECONSIDERATION

**CHOCTAW TELECOMMUNICATIONS, LLC
CHOCTAW HOLDINGS, LLC**

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SUMMARY

On September 11, 2014, the Commission issued an *MO&O* denying *Second Thursday* relief that would have allowed MCLM to assign licenses to Choctaw in order to effectuate a Reorganization Plan approved by a Federal Bankruptcy Court. The Commission denied relief solely on the theory that a grant would potentially benefit Donald DePriest, an alleged wrongdoer, by eliminating his obligation to repay various MCLM loan guarantees. Choctaw sought reconsideration demonstrating that no benefit would be conferred on Mr. DePriest by a grant of *Second Thursday* relief because he was judgment proof and creditors had forced him into involuntary bankruptcy. Mr. DePriest's MCLM loan guarantees were subsequently and finally extinguished in a separate personal bankruptcy proceeding. Based on this development, the Enforcement Bureau now supports reconsideration of the Commission's decision.

Although the Commission based denial of *Second Thursday* relief solely on the potential benefit issue, the *MO&O* contained a footnote indicating that it did not need to address the following arguments: (i) whether there was an "inside deal" between the DePriests and Choctaw; (ii) whether an alleged wrongdoer would have an impermissible continuing role with respect to the licenses; (iii) whether *Second Thursday* relief should not be available if a licensee had filed for bankruptcy protection primarily to terminate a hearing and circumvent the *Jefferson Radio* policy; (iv) whether the lack of a bankruptcy receiver or trustee precludes relief; and (v) whether competitive bidding authority to assign licenses should be part of the public interest balancing. None of the arguments preclude *Second Thursday* relief; instead they fully support reconsideration.

First, a Federal Bankruptcy Court reviewed the Reorganization Plan and determined that it was submitted in good faith without any collusion. As discussed herein, the DePriests played no role in the drafting or negotiation of the plan. Moreover, it was the innocent creditors and the Bankruptcy Court – not the DePriests – who *chose among competing plans* and selected the Choctaw Reorganization plan. These facts eliminate any concerns over an inside deal.

Second, the record establishes that neither Sandra DePriest, MCLM's sole officer, nor her husband, Donald DePriest, an alleged wrongdoer, will have a continuing role with respect to the licenses or the proposed new licensee, Choctaw. Choctaw previously submitted a Supplemental Declaration in this proceeding stating, among other things, that neither the DePriests nor any entity with which the DePriests are affiliated will have any role with Choctaw or any future rule with respect to the licenses at issue.

Third, the Commission has previously concluded that "operating under bankruptcy law generally imposes substantial short-term and long-term burdens on the bankrupt company that provide more than an adequate disincentive to the use of bankruptcy to evade accountability to the Commission." Mr. DePriest's personal bankruptcy further underscores the legitimacy of these actions. The fact that a Federal Bankruptcy Court approved the Reorganization Plan and concluded that that it was submitted in good faith underscores that MCLM was in a dire financial situation and that the bankruptcy filing was not a ruse.

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Fourth, MCLM filed for bankruptcy under Chapter 11 of the Bankruptcy Code. Under Chapter 11, the debtor-in-possession (*i.e.*, MCLM) serves as the trustee and has all of the rights and fiduciary obligations of a trustee. Indeed, the terms “trustee” and “debtor in possession” are essentially interchangeable under the Bankruptcy Code. Further, in this case, the unsecured creditors negotiated the use of an independent Liquidating Agent which provides additional protection to ensure that (i) creditors are properly repaid and (ii) Choctaw performs all obligations required under the terms of the Reorganization Plan. Thus, the absence of a “formal” trustee does not affect the legitimacy of *Second Thursday* relief.

Finally, there is nothing about the FCC’s auction authority that can or should alter the Commission’s approach to the narrow circumstances of *Second Thursday*. The purpose of *Second Thursday* is to harmonize the policies of federal bankruptcy law with those of the Communications Act. Congress granted the Commission auction authority to promote the rapid deployment of services, particularly by small businesses, and to recover some value for the spectrum in situations where mutually exclusive applications have been filed. But it did not intend that competitive bidding override other federal policies such as respect for bankruptcy laws as required by *LaRose*. If *Second Thursday* relief is granted, MCLM’s licenses will be granted to a new entrant – Choctaw – and the Commission will recover additional value for the spectrum through recoupment of all bidding credits previously awarded to MCLM, thereby furthering statutory goals relating to the use of auctions.

Based on the foregoing, *Second Thursday* relief is appropriate and should be granted to effectuate the decision of the Federal Bankruptcy Court. Grant of *Second Thursday* relief will ensure that innocent creditors can be repaid pursuant to the Bankruptcy process.

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³ Petition for Reconsideration filed by Choctaw Telecommunications, LLC and Choctaw Holdings, LLC, WT Docket No. 13-85 (Oct. 14, 2014). Most of the issues were previously addressed by Choctaw on the record. *See* Choctaw Reply Comments and Opposition to Petitions to Deny, WT Docket No. 13-85 (May 30, 2013) (“Choctaw Reply”) (addressing the role of the DePriests, the absence of insider dealing, and the use of a bankruptcy trustee). On November 9, 2015, Choctaw filed a supplement to its Petition for Reconsideration to update the Commission on new factual developments relating directly to arguments made by the Enforcement Bureau

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that it would be helpful to submit a supplement responding to the footnote 56 arguments in an updated filing.⁴ The Supplement is being filed pursuant to this discussion.

BACKGROUND AND INTRODUCTION

Three years ago, the United States Bankruptcy Court for the Northern District of Mississippi approved a Reorganization Plan submitted by Choctaw as the vehicle for getting MCLM's creditors repaid. The Bankruptcy Court conditioned its approval of the Reorganization Plan upon Choctaw and MCLM obtaining the necessary FCC approvals. Less than two weeks after approval of the Reorganization Plan by the Bankruptcy Court, Choctaw and MCLM sought Commission approval to assign MCLM's licenses to Choctaw pursuant to the *Second Thursday* doctrine.⁵

On September 11, 2014, the Commission denied *Second Thursday* relief based on the idea that a grant would potentially benefit Donald DePriest, an alleged wrongdoer, because it would eliminate his obligation to repay various MCLM loan guarantees. Choctaw sought reconsideration demonstrating that no preclusive benefit would be conferred on Mr. DePriest by a grant of *Second Thursday* relief because his debts exceeded his assets, he was judgment proof,

during the pleading cycle that could not have been presented during the pleading cycle. The Supplement notified the Commission that Donald DePriest's involuntary personal bankruptcy process had concluded and the guarantees upon which the Commission denied *Second Thursday* relief have been extinguished. *See* Attachment A.

⁴ *See* Choctaw Summary of Non Ex Parte Oral Presentations, WT Docket No. 13-85 (Jan. 27, 2016).

⁵ Choctaw and MCLM initially sought waivers to permit the assignment of MCLM's site-based licenses without the need for a hearing to address the status of the licenses. That hearing was conducted and finished on December 14, 2014. Chief Administrative Law Judge Sippel will determine what site-based licenses remain valid and can be assigned to Choctaw. Accordingly, action on the waivers is no longer necessary and Choctaw is prepared to withdraw those waivers upon request or action by the Administrative Law Judge in the hearing, whichever comes first.

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and creditors had forced him into involuntary bankruptcy. The Enforcement Bureau initially opposed reconsideration.⁶

On November 9, 2015, Choctaw supplemented its Petition for Reconsideration to notify the Commission that Mr. DePriest's involuntary bankruptcy proceeding had concluded and that, as part of the proceeding, all of his MCLM loan guarantees were extinguished.⁷ Based on these new facts, the Enforcement Bureau filed in support of reconsideration.⁸

Choctaw urges the Commission to act expeditiously and grant reconsideration of the *MO&O*. Consistent with Commission and court precedent, grant of *Second Thursday* relief will accommodate bankruptcy law and protect innocent creditors. As established by *LaRose*:

Administrative agencies have been required to consider other federal policies, not unique to their particular area of administrative expertise, when fulfilling their mandate to assure that their regulatees operate in the public interest. . . . [A]gencies should constantly be alert to determine whether their policies might conflict with other federal policies and whether such conflict can be minimized.⁹

Grant of *Second Thursday* relief will enable repayment of all of MCLM's creditors – both secured and unsecured – consistent with the Reorganization Plan approved by the Bankruptcy Court. The current debt associated with the bankrupt MCLM now stands at approximately \$33.6 million. If *Second Thursday* relief is granted, [REDACTED] in pending transactions involving geographic licenses will be available to close, reducing the amount

⁶ Enforcement Bureau Opposition to Petition for Reconsideration, WT Docket No. 13-85, at 2-4 (Oct. 24, 2014).

⁷ Choctaw Supplement to Petition for Reconsideration, WT Docket No. 13-85 (Nov. 9, 2015).

⁸ Enforcement Bureau's Response to MCLM's and Choctaw's Motions for Leave to Supplement Their Petitions for Reconsideration, WT Docket No. 13-85, at 2 (Nov. 12, 2015) (noting that "it would be appropriate to reconsider the *Order*").

⁹ *LaRose v. FCC*, 494 F.2d 1145, 1146 n.2 (D.C. Cir. 1974) (citations omitted).

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necessary to repay creditors in full to [REDACTED]. Choctaw believes that the value of the remaining portion of the four geographic licenses would be sufficient to fully repay this amount.¹⁰

Choctaw intends to fully repay the unsecured creditors.¹¹ The Reorganization Plan (as modified by the Confirmation Order¹²) provides for repayment in the following manner, which ensures that creditors not involved with Choctaw – including the FCC – will be fully repaid:

- A preferential payment of the first \$600,000 in proceeds from any license sales to the unsecured creditors. This payment must be made before any distribution to Choctaw.
- The Implementation of an Independent Liquidating Agent, which counsel for the Creditors Committee selected. This Liquidating Agent will collect and distribute funds according to the Reorganization Plan, and ensure that Choctaw performs its obligations.
- The grant of a stock pledge in favor of the Liquidating Agent, which in effect makes the non-Choctaw creditors secured in the licenses.
- If the Liquidating Agent determines that Choctaw is not moving quickly enough to repay these other creditors, he may foreclose on the stock pledge and (subject to FCC approval) take control of Choctaw Holdings.

Moreover, as discussed below, none of the arguments identified in footnote 56 of the *MO&O* justify denial of *Second Thursday* relief. Choctaw is committed to ensuring that all licenses it obtains pursuant to *Second Thursday* fully comply with the Commission's rules. Although certain licenses will have to be sold to repay unsecured creditors, Choctaw intends to fully buildout the retained geographic licenses in order to operate these systems. Choctaw has

¹⁰ See Attachment B, Confidential Declaration of Patrick Trammell (originally attached to Choctaw's November 9th Supplement to Petition for Reconsideration).

¹¹ See Attachment C, Declaration of Patrick Trammell.

¹² See Order Confirming Plan of Reorganization, *Maritime Communications/Land Mobile, LLC*, Case No. 11-13463-DWH, at 3 (Bankr. N.D. Miss. Jan. 11, 2013) ("Confirmation Order")

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obtained bids from multiple engineering and construction partners and is prepared to commence buildout.¹³

Grant of *Second Thursday* relief also will ensure that the spectrum is put to use more promptly. In this regard, multiple applications currently are pending with the Commission to assign/transfer MCLM licenses to critical infrastructure industry entities. The spectrum subject to these applications will permit such services as Supervisory Control and Data Acquisition related to the operation of pipelines and liquefied natural gas facilities in the oil and gas industry as well as smart grid and other critical infrastructure industry functions in the electric utility industry. If *Second Thursday* relief is granted, these transactions can close and critical services necessary to protect public safety can continue uninterrupted.

DISCUSSION

I. THE DEPRIESTS WERE NOT INVOLVED IN THE DRAFTING OR APPROVAL OF THE REORGANIZATION PLAN

The application pending before the Commission seeks *Second Thursday* relief to effectuate a Reorganization Plan confirmed by the United States Bankruptcy Court for the Northern District of Mississippi. In the attached Declaration, Mr. Trammell unequivocally states that “Donald and Sandra DePriest played no role in developing or negotiating the Reorganization Plan submitted to and approved by the MCLM Bankruptcy Court.”¹⁴ There simply is no

¹³ See *id.* Mr. Trammell testified confidentially during the MCLM hearing regarding the steps Choctaw has taken to stay abreast of the industry and to develop a business plan. A copy of that confidential testimony is attached as Attachment D. Moreover, Choctaw’s shareholders have provided the debtor-in-possession financing for MCLM – approximately \$5 million to date – to ensure the company can meet its obligations while this transaction remains pending before the FCC.

¹⁴ Attachment C, Declaration of Patrick Trammell; see also Choctaw Reply at 19-21. Conversely, neither Patrick Trammell, the Chairman and Chief Executive Officer of Choctaw, nor any of the secured creditors that formed Choctaw, played any role in the management of

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evidence of an inside deal and the bankruptcy process precluded any such deal. There is no basis for the FCC to collaterally attack the court's conclusion.

Specifically, the bankruptcy process afforded an opportunity for any interested party to submit proposals to obtain the licenses and repay creditors. Both Choctaw and Council Tree Investors, Inc. submitted competing proposals.¹⁵ The entire creditor group reviewed both plans and selected the Choctaw plan based on positive votes from an overwhelming majority of the creditors *from each and every class*. As the Bankruptcy Court Judge noted in confirming the Choctaw plan: "I look at the votes – and that's another compelling thing – that have been presented by the tally of the ballots. *Every class voted to accept confirmation* by the respected requirements of the law."¹⁶

Moreover, before a plan of reorganization can be approved by a bankruptcy court, Section 1129(a)(3) of the Bankruptcy Code requires the court to find that the plan has been "proposed in good faith and not by any means forbidden by law."¹⁷ In making this determination, bankruptcy courts analyze whether a plan is proposed with honesty, good

MCLM or the development and/or implementation of the bidding strategy that led to issuance of a Hearing Designation Order against MCLM. See Attachment C; *Maritime Communications/Land Mobile, LLC*, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, 26 FCC Rcd 6520 (2011) ("HDO").

¹⁵ Council Tree withdrew its proposal on the eve of the bankruptcy hearing after the unsecured creditors voted to approve Choctaw's proposal.

¹⁶ Bankruptcy Hearing Transcript, *Maritime Communications/Land Mobile, LLC, Debtor*, U.S. Bankruptcy Court Northern District of Mississippi, Case No. 11-13463-dwh, at 187 (Nov. 15, 2012) ("MCLM Bankruptcy Transcript") (emphasis added).

¹⁷ 11 U.S.C. § 1129(a)(3). A bankruptcy plan is proposed in good faith when it is likely to achieve a result consistent with the purposes of Chapter 11 and the standards prescribed by the bankruptcy code. *Search Mkt. Direct, Inc. v. Jubber (In re Paige)*, 685 F.3d 1160 (10th Cir. 2013). Courts have held that the plan must serve the reorganization-related purposes of Chapter 11. *In re Coastal Cable T.V.*, 709 F.2d 762 (1st Cir. 1983); *In re Drexel Burnham Lambert Group*, 138 B.R. 723 (Bankr. S.D.N.Y. 1992).

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intentions and is designed to “prevent abuse of the bankruptcy laws and protect jurisdictional integrity.”¹⁸ This includes an analysis of the totality of circumstances surrounding the formulation of a Chapter 11 plan, including whether the plan was proposed with the legitimate and honest purpose to reorganize and has a reasonable hope of success.¹⁹ Among the factors considered in this analysis are whether the plan (i) preserves going concern value; (ii) discourages debtor misconduct; (iii) facilitates the expeditious liquidation and distribution of bankruptcy estate assets to its creditors; and (iv) achieves fundamental fairness and justice.²⁰

The Judge in the MCLM bankruptcy case, after hearing two days of evidentiary testimony and reviewing exhibits, determined that the Reorganization Plan – calling for the assignment of MCLM’s licenses to Choctaw – met the good faith requirement imposed by Section 1129(a)(3) and held that Choctaw was a good faith purchaser.²¹ In particular, the Judge found that the plan was the result of intense arm’s-length negotiations between various parties, including the unsecured creditors. This determination demonstrates that the bankruptcy process was conducted in good faith.

The Judge also described Choctaw’s involvement as follows:

But I think about Choctaw and their involvement in this case. There is a lot of reason for them to be involved in this case. Number one it’s sort of self-preservation at one point. But they’re taking a risk. And sometimes when you take a risk, you expect a little [profit] – no telling how big the pot of gold might be at the end of the rainbow, it might be little bitty, it might be good. But

¹⁸ *In re Walker*, 165 B.R. 994, 1001 (E.D. Va. 1994).

¹⁹ *Ronit, Inc. v. Stemson Corp* (*In re Block Shim Dev. Co.-Irving*), 939 F.2d 289,292 (5th Cir. 1991).

²⁰ *In re W.R. Grace & Co.*, 729 F.3d 332 (3d Cir. 2013). This includes an analysis of whether the plan was negotiated with fundamental fairness shown to creditors. *In re Jorgensen*, 66 B.R. 104 (B.A.P. 9th Cir. 1986).

²¹ See Confirmation Order at 3.

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*you're not out there for philanthropic effect on the economy. You're there to make a living and to make money and, I mean, I understand that and I think that's what makes our country go. So you consider all those factors and I hope the FCC will, because I'm considering them in my decision here today.*²²

In essence, the bankruptcy process relies on bidders like Choctaw and such bidders are unlikely to participate in the process if they are precluded from making a profit. The Commission should not set precedent that adversely impacts bankruptcy but instead should "accommodate the findings of bankruptcy courts."²³

II. THE DEPRIESTS WILL HAVE NO ROLE WITH RESPECT TO THE MCLM LICENSES BEING ASSIGNED TO CHOCTAW

The record establishes that neither Sandra DePriest, MCLM's sole officer, nor her husband, Donald DePriest, an alleged wrongdoer in the *HDO*, will have a continuing role with respect to the licenses or the proposed new licensee, Choctaw.²⁴ Choctaw previously submitted a Supplemental Declaration in this proceeding stating, among other things, that neither the DePriests nor any entity with which the DePriests are affiliated will have any role with Choctaw

²² MCLM Bankruptcy Transcript at 185 (emphasis added). Choctaw previously addressed windfall arguments on the record. See Choctaw Reply at 17-19, which is set forth as Attachment E (without exhibits). Among other things, Choctaw noted that it effectively bid more than \$42 million for MCLM's assets during the bankruptcy process. Choctaw credit bid approximately \$15 million for its claims, assumed nearly \$26 million in pre-petition claims against MCLM, and agreed to pay the approximately \$1.2 million in administrative expense claims incurred during the Bankruptcy Case. Thus, the minimum consideration that Choctaw has provided for the Licenses exceeds \$42 million. *Id.* at 18. This does not include additional costs associated with building out licenses awarded pursuant to *Second Thursday*.

²³ *New DBSD Satellite Services G.P.*, 25 FCC Rcd 13664, 13668 (IB 2010) (citing *LaRose v. FCC*, 494 F.2d at 1146 n.2).

²⁴ See Choctaw Reply at 8-9. Moreover, as noted above, neither Patrick Trammell, the Chairman and Chief Executive Officer of Choctaw, nor any of the secured creditors that formed Choctaw, played any role in the management of MCLM or the development and/or implementation of the bidding strategy that led to issuance of the *HDO*. See Attachment C.

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or any future rule with respect to the licenses at issue.²⁵ Further, the Judge in the MCLM bankruptcy, after reviewing numerous exhibits and lengthy testimony, determined that it was “pretty undisputed as far as the proof that I’ve heard today” that the DePriests would have no future role with Choctaw.²⁶ There is no evidence to the contrary.

III. MCLM’S BANKRUPTCY WAS NOT USED TO EVADE FCC REVIEW

The FCC has long recognized that it “is obliged to reconcile its policies under the Communications Act with the policies of other federal laws and statutes, including the federal bankruptcy laws in particular.”²⁷ The Commission created *Second Thursday* for that very purpose – to establish an exception from *Jefferson Radio* to permit licenses designated for hearing to be assigned or transferred in order to accommodate bankruptcy law and get creditors repaid.²⁸

The Commission has previously recognized that “operating under bankruptcy law generally imposes substantial short-term and long-term burdens on the bankrupt company that *provide more than an adequate disincentive* to the use of bankruptcy to evade accountability to the Commission.”²⁹ MCLM filed for bankruptcy because it lacked the resources to conduct day-to-day operations and was unable to repay creditors. Moreover, not only did MCLM file for bankruptcy, but the alleged wrongdoer – Donald DePriest – was forced into involuntary personal

²⁵ See Attachment F, Supplemental Declaration of Patrick Trammell (originally attached to the Choctaw Reply).

²⁶ *Maritime Communications/Land Mobile, LLC*, Case No. 11-13463-DWH, Hearing Transcript at 183.

²⁷ See *Dale J. Parsons*, 10 FCC Rcd 2718, 2720 (1995).

²⁸ See *Second Thursday Corp.*, Memorandum Opinion and Order, 22 FCC 2d 515, 516, *recon. granted in part*, Memorandum Opinion and Order, 25 FCC 2d 112 (1970).

²⁹ *WorldCom, Inc.*, 18 FCC Rcd 26484, 26499-500 (2003) (“emphasis added”).

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bankruptcy. As discussed above, the Bankruptcy Court has an independent obligation to assess whether the bankruptcy was in good faith and determined that it was in the MCLM case. There is no basis to second guess the court's determination.³⁰ This decision and the underlying facts demonstrate that the bankruptcy filing certainly was no ruse to avoid Commission review of MCLM's qualifications.

IV. THE ABSENCE OF A BANKRUPTCY RECEIVER OR TRUSTEE DOES NOT RENDER *SECOND THURSDAY* RELIEF INAPPROPRIATE

There is no overriding communications law or policy requiring the use of a bankruptcy receiver or trustee and *Second Thursday* precedent does not require the use of such a receiver or trustee. The appropriateness of a receiver or trustee is a question for the bankruptcy courts and the Commission "seeks, where possible within the framework of the requirements of the Communications Act, to accommodate the policies of the Bankruptcy Code and the findings of bankruptcy courts."³¹ The Commission has recognized that it will not revisit issues previously considered by a bankruptcy court.³²

Bankruptcy law recognizes the debtor-in-possession to be the equivalent of a trustee. Pursuant to Section 1107 of the Bankruptcy Code, a debtor-in-possession has all of the rights and

³⁰ See *New DBSD Satellite Services G.P.*, 25 FCC Rcd 13664, 13668 (IB 2010) (stating that the Commission "seeks, where possible within the framework of the requirements of the Communications Act, to accommodate the policies of the Bankruptcy Code and the findings of bankruptcy courts.").

³¹ *New DBSD Satellite Services*, 25 FCC Rcd at 13668 (citing *LaRose v. FCC*, 494 F.2d at 1146 n.2) (emphasis added).

³² *George L. Miller*, Memorandum Opinion and Order, 24 FCC Rcd 3471, 3472 (2009) (citing *Kralowec Children's Family Trust*, 12 FCC Rcd 19690 (MMB 1997) (the FCC will not revisit issues previously considered and resolved by a bankruptcy court); see *La Rose*, 494 F.2d at 1147 (the FCC is obligated to protect innocent creditors as long as the transaction in question does not unduly interfere with objectives of the Communications Act)).

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fiduciary obligations of a trustee.³³ Indeed, the terms “trustee” and “debtor in possession,” as used in the Bankruptcy Code, are essentially interchangeable.³⁴ Hence, by virtue of being a debtor-in-possession, MCLM operated not only as a business entity, but essentially as a trustee as well.³⁵ Because MCLM as debtor-in-possession has the same obligations as a bankruptcy trustee, there is no functional difference between a bankruptcy trustee making an application to assign licenses, and MCLM debtor-in-possession making the application to assign the licenses.

Further, in addition to MCLM debtor-in-possession serving as a trustee under bankruptcy law, the unsecured creditors negotiated additional protections in this case that the Bankruptcy Court approved. Specifically, an *independent* Liquidating Agent has been appointed by the Bankruptcy Court to ensure that (i) creditors are properly repaid and (ii) Choctaw performs all obligations required under the terms of the Reorganization Plan. In fact, the Liquidating Agent filed comments in this proceeding objecting to the petitions to deny and stating that “[t]he purpose of the Liquidating Agent, among others, is to oversee the claims process and the distribution of funds to unsecured creditors, and in many respects, is similar to a bankruptcy trustee in a liquidation.”³⁶ There is simply no basis for this bankruptcy process issue to alter the FCC’s approach to *Second Thursday*.

³³ The term “debtor in possession” refers to a debtor in a chapter 11 case (such as the MCLM bankruptcy) for which no trustee has been appointed. See 11 U.S.C. § 1101(1). When no trustee is appointed, the Bankruptcy Code gives a debtor in possession the powers and duties of a trustee. *Id.* § 1107(a); FED. R. BANKR. P. 9001(11). See also *Marvel Entertainment Group, Inc.*, 140 F.3d 463, 474 (3d Cir. 1998).

³⁴ See *L.R.S.C. Co. v. Rickel Home Ctrs., Inc.*, 209 F.3d 291, 297 & n. 7 (3d Cir. 2000).

³⁵ See *Commodity Futures Trading Comm’n v. Weintraub*, 471 U.S. 343, 355 (1985) (citing *Wolf v. Weinstein*, 372 U.S. 633, 649-652 (1963)).

³⁶ See Warren Averett, LLC Objection to Petitions to Deny at 5, WT Docket No. 13-85 (May 29, 2013).

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V. THE EXISTENCE OF COMPETITIVE BIDDING AUTHORITY TO CHOOSE AMONG MUTUALLY EXCLUSIVE APPLICANTS HAS NEVER IMPACTED SECOND THURSDAY RELIEF NOR SHOULD IT NOW

The Commission has applied *Second Thursday* in numerous cases where licenses either were assigned via competitive bidding or could have been reassigned in that manner if *Second Thursday* relief was denied.³⁷ It has never previously suggested applying the *Second Thursday* policy differently because, in the absence of such relief, mutually exclusive applications could be filed that could be awarded by competitive bidding. Doing so would be inconsistent with long-standing court and Commission precedent.

As noted above, the FCC “is obliged to reconcile its policies under the Communications Act with the policies of other federal laws and statutes, including the federal bankruptcy laws in particular.”³⁸ In this regard, the United States Court of Appeals for the District of Columbia Circuit has warned:

Administrative agencies have been required to consider other federal policies, not unique to their particular area of administrative expertise, when fulfilling their mandate to assure that their regulatees operate in the public interest. . . . [A]gencies should constantly be alert to determine whether their policies might conflict with other federal policies and whether such conflict can be minimized.³⁹

The court further stated that the Commission must “accommodate[] the policies of federal bankruptcy law with those of the Communications Act.”⁴⁰

³⁷ See *WorldCom, Inc.*, 18 FCC Red 26484 (2003); *Mobilemedia Corp.*, 14 FCC Red 8017 (1999); *Family Broadcasting, Inc.*, 25 FCC Red 7591 (2010); *Shareholders of Stop 26 Riverbend, Inc.*, 27 FCC Red 6516 (2012), *aff’g Mark S. Litton*, 22 FCC Red 641 (MB 2007); *JBS, Inc.*, 29 FCC Red 1121 (MB 2014); *Eddie Floyd*, 26 FCC Red 5993 (MB 2011).

³⁸ See *Dale J. Parsons*, 10 FCC Red at 2720.

³⁹ *LaRose*, 494 F.2d at 1146 n.2 (citations omitted).

⁴⁰ *Id.*

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Congress granted the Commission auction authority to promote the rapid deployment of services, particularly by small businesses, and to recover some value for the spectrum in situations where mutually exclusive applications have been filed. But it did not intend that competitive bidding override other federal policies such as accommodation of bankruptcy laws as required by *LaRose*. Indeed, in granting the Commission auction authority, Congress explicitly did not alter the Commission's "obligation in the public interest to continue" to take steps to "avoid mutual exclusivity."⁴¹ Section 309(j)(6)(E) actually requires the FCC to "minimize mutual exclusivity 'in the public interest' and 'within the framework of existing policies'"⁴² such as the need to accommodate bankruptcy law and *Second Thursday*. Thus, there is no basis for altering the existing *Second Thursday* policy.

Moreover, auction authority was granted to promote the rapid deployment of services, particularly by new entrants, and to recover some value for the spectrum.⁴³ If *Second Thursday* relief is granted, MCLM's licenses will have been initially granted by competitive bidding and the FCC will be fully paid, including repayment of all bidding credits, via *Second Thursday*, and the licenses will be assigned to a new entrant – Choctaw. Grant of *Second Thursday* relief also will allow innocent creditors to be repaid fully pursuant to the Reorganization Plan approved by the Bankruptcy Court.

⁴¹ 47 U.S.C. § 309(j)(6)(E).

⁴² *Bachow Communs., Inc. v. FCC*, 237 F.3d 683, 691-92 (D.C. Cir. 2001).

⁴³ 47 U.S.C. § 309(j)(3)(A)-(C).

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CONCLUSION

Based on the foregoing, *Second Thursday* relief is appropriate and should be granted to effectuate the decision of the Federal Bankruptcy Court. Grant of *Second Thursday* relief will ensure that innocent creditors can be repaid pursuant to the Bankruptcy process.

Respectfully submitted,

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ATTACHMENT A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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REDACTED PUBLIC VERSION

detailed information demonstrating that Mr. DePriest is judgment-proof because (i) his liabilities grossly exceed his total assets and (ii) he had been forced into involuntary bankruptcy.⁵

The Enforcement Bureau opposed reconsideration, arguing primarily that the involuntary bankruptcy proceeding does not warrant reconsideration because the status of Mr. DePriest's loan guarantees will be unknown until the bankruptcy process concludes.⁶ The purpose of this supplement is to notify the Commission that the bankruptcy process has concluded and the guarantees at issue have been extinguished.⁷ Accordingly, the Bureau's concern is now moot and a grant of *Second Thursday* relief will not benefit Donald DePriest, an alleged wrongdoer in the proceeding.

Choctaw urges the Commission to act expeditiously and grant reconsideration. Grant of *Second Thursday* relief will accommodate bankruptcy law and protect innocent creditors. Although the Enforcement Bureau also previously expressed concern that a grant of *Second Thursday* relief may not benefit unsecured creditors,⁸ Choctaw will be able to repay all of MCLM's creditors fully – both secured and unsecured – consistent with the Reorganization Plan approved by the Bankruptcy Court if relief is granted. In this regard, the current debt associated

⁵ Petition at 2, 7-9; Reply to Oppositions at 1-3.

⁶ Bureau Opposition at 2-4.

⁷ On October 27, 2015, the court issued a Debtor Discharge Order granting Donald R. DePriest a discharge of his debts and obligations pursuant to section 727 of title 11 of the United States Code (the "Bankruptcy Code"). A discharge under section 727 of the Bankruptcy Code discharges Mr. DePriest from "all debts that arose before the date of the order for relief under this chapter... whether or not a proof of claim based on any such debt or liability is filed under section 501 of this title, and whether or not a claim based on any such debt or liability is allowed under section 502 of this title." 11 U.S.C. § 727(b). Therefore, all of Mr. DePriest's debts that existed as of his bankruptcy petition date, September 19, 2014, including without limitation all guaranty obligations, have now been discharged and the creditors holding those claims have no right to pursue or seek recovery on those claims. See Chapter 7 Discharge of Debtor Order, Donald R. DePriest, U.S. Bankruptcy Court Northern District of Mississippi, Case No. 14-13522-JDW (Oct. 27, 2015) (attached as Exhibit 1); see also Schedules F & H to the Chapter 7 Filing, Case No. 14-13522-JDW (listing MCLM loan guarantees)(attached as Exhibit 2).

⁸ Bureau Opposition at 2-4.

REDACTED PUBLIC VERSION

with the bankrupt MCLM now stands at approximately \$33.6 million.⁹ Approximately [REDACTED] in transactions involving MCLM's geographic licenses currently are pending before the Commission.¹⁰ If *Second Thursday* relief is granted, these transactions can close and the revenue will be used to repay creditors as part of the reorganization plan approved by the MCLM bankruptcy court. As a result, the amount necessary to repay creditors in full would be reduced to [REDACTED]. Choctaw believes that the value of the remaining portion of the 4 geographic licenses would be more than sufficient to fully repay this amount.¹¹

Further, the Reorganization Plan (as modified by the Confirmation Order) provides for repayment in the following manner, which ensures that creditors not involved with Choctaw will be fully repaid:

- A preferential payment of the first \$600,000 in proceeds from any license sales to the unsecured creditors. This payment must be made before any distribution to Choctaw.
- The Implementation of an Independent Liquidating Agent, which was selected by counsel for the Creditors Committee. This Liquidating Agent will collect and distribute funds according to the Reorganization Plan, and ensure that Choctaw performs its obligations.
- The grant of a stock pledge in favor of the Liquidating Agent, which in effect makes the non-Choctaw creditors secured in the licenses.
- If the Liquidating Agent determines that Choctaw is not moving quickly enough to repay these other creditors, it may foreclose on the stock pledge and (subject to FCC approval) take control of Choctaw Holdings.

⁹ This figure includes approximately [REDACTED]

¹⁰ There are additional transactions involving site-based licenses, but those remain subject to the outcome of Issue (g) in the pending MCLM hearing. Because of the uncertainty over these licenses, they are not included in the valuation calculations.

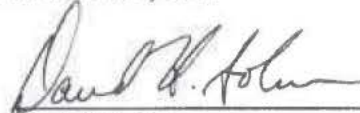
¹¹ See Exhibit 3. Choctaw is committed to ensuring that all licenses it retains are in full compliance with the Commission's rules and revenue generated from sales that is not necessary to repay creditors can be used to complete buildout of the geographic licenses.

REDACTED PUBLIC VERSION

For the foregoing reasons, coupled with the long-recognized importance of accommodating bankruptcy law and protecting innocent creditors, Choctaw urges a prompt grant of *Second Thursday* relief on reconsideration.

Respectfully submitted,
CHOCTAW TELECOMMUNICATIONS, LLC
CHOCTAW HOLDINGS, LLC

By:



David H. Solomon

Robert G. Kirk

WILKINSON BARKER KNAUER, LLP

1800 M Street, NW Suite 800N

Washington, DC 20036

202.783.4141

Their Attorneys

November 9, 2015

REDACTED PUBLIC VERSION

EXHIBIT 1

United States Bankruptcy Court

Northern District of Mississippi

Case No. 14-13522-JDW

Chapter 7

In re Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):

Donald R. DePriest
510 7th Street North
Columbus, MS 39701

Social Security / Individual Taxpayer ID No.:

xxx-xx-8438

Employer Tax ID / Other nos.:

DISCHARGE OF DEBTOR

It appearing that the debtor is entitled to a discharge,

IT IS ORDERED:

The debtor is granted a discharge under section 727 of title 11, United States Code, (the Bankruptcy Code).

BY THE COURT

Dated: 10/27/15

Jason D. Woodard
United States Bankruptcy Judge

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.

EXPLANATION OF BANKRUPTCY DISCHARGE IN A CHAPTER 7 CASE

This court order grants a discharge to the person named as the debtor. It is not a dismissal of the case and it does not determine how much money, if any, the trustee will pay to creditors.

Collection of Discharged Debts Prohibited

The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. *[In a case involving community property:* There are also special rules that protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.] A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

Debts That are Discharged

The chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If this case was begun under a different chapter of the Bankruptcy Code and converted to chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.)

Debts That are Not Discharged

Some of the common types of debts which are not discharged in a chapter 7 bankruptcy case are:

- a. Debts for most taxes;
- b. Debts incurred to pay nondischargeable taxes;
- c. Debts that are domestic support obligations;
- d. Debts for most student loans;
- e. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- f. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle, vessel, or aircraft while intoxicated;
- g. Some debts which were not properly listed by the debtor;
- h. Debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged;
- i. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements for reaffirmation of debts; and
- j. Debts owed to certain pension, profit sharing, stock bonus, other retirement plans, or to the Thrift Savings Plan for federal employees for certain types of loans from these plans.

This information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case.

REDACTED PUBLIC VERSION

EXHIBIT 2

B6F (Official Form 6F) (12/07)

In re **Donald R. DePriest**

Case No. **14-13522**

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR H W J C	Husband, Wife, Joint, or Community	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No.			Judgment				
Alabama Department of Economic & Community Affairs Attn: Legal or Bankruptcy Dept. P.O. Box 5690 Montgomery, AL 36103-5690	-						2,947,889.74
Account No.			Representing: Alabama Department of Economic				Notice Only
Parnell & Crum, PA P.O. Box 2189 Montgomery, AL 36102							
Account No.			misc charges/purchases				
Bank of America P.O. Box 15019 Wilmington, DE 19886	-						15,000.00
Account No.			Representing: Bank of America				Notice Only
Bank of America P.O. Box 26118 Tampa, FL 33633							
Subtotal (Total of this page)							2,962,889.74

14 continuation sheets attached

In re **Donald R. DePriest**

Case No. **14-13522**

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E D E B T O R	H W J C	Husband, Wife, Joint, or Community DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
Account No. xxxxx5676 Bank of Vernon PO Box 309 Vernon, AL 35592			deficiency on loan upon which all collateral was foreclosed in 2009; exact amount unknown (orig. note before foreclosure \$3,578,153.94)				Unknown
Account No. Bank of Vernon PO Box 309 Vernon, AL 35592			Deficiency on American Nonwovens Corp. (collateral foreclosed 2006) loan upon which debtor was obligated on personal guaranty (orig amt. \$10,000,000)				Unknown
Account No. xxxxxxxxxxxxx0123 Bank of Vernon Mastercard P.O. Box 30495 Tampa, FL 33630			misc purchases/charges				1,600.00
Account No. Bart Wise 101 Arrington Blvd Columbus, MS 39702		X	personal guaranty on loan				141,322.95
Account No. John W. Crowell, Esquire P.O. Box 1827 Columbus, MS 39703-1827			Representing: Bart Wise				Notice Only
Subtotal (Total of this page)							142,922.95

Sheet no. 1 of 14 sheets attached to Schedule of
Creditors Holding Unsecured Nonpriority Claims

In re **Donald R. DePriest**

Case No. **14-13522**

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E D E B T O R	H U S B A N D, W I F E, J O I N T, O R C O M M U N I T Y	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
Account No.			misc				500,000.00
Baulch & Bingham 1901 Sixth Avenue North Suite 1500 Birmingham, AL 35203-4642		-					
Account No.			Judgment				797,405.95
BNA Bank P.O. Box 811 New Albany, MS 38652		-					
Account No.			Representing: BNA Bank				Notice Only
Rutledge, Davis & Harris, PLLC P.O. Box 29 New Albany, MS 38652-0029							
Account No.			December 1, 2005 personal guaranty on loan				80,000.00
Bruce A. Davis 7800 Indian Springs Drive Nashville, TN 37221	X	-					
Account No.			personal guaranty on loan				0.00
C. Chris Dupree 2660 Montgomery Highway Dothan, AL 36303		-					
Subtotal (Total of this page)							1,377,405.95

Sheet no. **2** of **14** sheets attached to Schedule of
Creditors Holding Unsecured Nonpriority Claims

Subtotal
(Total of this page) **1,377,405.95**

In re **Donald R. DePriest**

Case No. **14-13522**

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E D E B T O R	H W J C	Husband, Wife, Joint, or Community	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
Account No.								
Bill D. Bensinger, Esquire Baker Donelson Bearman Caldwell & Berkowitz 420 20th Street N., Ste. 1600 Birmingham, AL 35203				Representing: C. Chris Dupree				Notice Only
Account No.				signature loan				
Citizens National Bank 512 22nd Avenue Meridian, MS 39301								50,000.00
Account No.				September 9, 2013 Judgment/personal guaranty				
Clark Bullock and Whitney Bullock 275 Oak Summitt Road Millbrook, NY 12545		X -						366,498.38
Account No.				Representing: Clark Bullock and Whitney Bullock				Notice Only
David E. Weiss, Esquire Sills Cummis & Gross PC 30 Rockefeller Plaza New York, NY 10112								
Account No.				personal guaranty on loan				
David Shelton 1602 Forest Hill Drive Columbus, MS 39701		X -						125,000.00
Sheet no. 3 of 14 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims								
Subtotal (Total of this page)								541,498.38

In re Donald R. DePriest

Case No. 14-13522

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E D E B T O R	H U S B A N D W I F E J O I N T O R	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N S E C U R E D	A M O U N T O F C L A I M
Account No. Douglas C. Sellers P.O. Box 589 Montgomery, AL 36101-0589	X	-	March 26, 2009 personal guaranty on loan			42,764.00
Account No. Dove Roofing 1025 N. Lehmberg Road Columbus, MS 39701	-	-	misc services			5,000.00
Account No. Edna H. Smith 501 7th Street North Columbus, MS 39701	-	-	June 23, 2009 Judgment			43,984.00
Account No. Elton S. Thomas, Jr. 1701 Bramblewood Drive Columbus, MS 39705	-	-	misc unsecured debt			250,000.00
Account No. Estate of Ben Martin, III	-	-	misc./signature loan			400,000.00
Subtotal (Total of this page)						741,748.00

Sheet no. 4 of 14 sheets attached to Schedule of
Creditors Holding Unsecured Nonpriority Claims

Subtotal
(Total of this page)

741,748.00

In re **Donald R. DePriest**

Case No. **14-13522**

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E D E B I T O R	H U S B A N D, W I F E, J O I N T, O R C O M M U N I T Y	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
Account No.			misc./ signature loan				50,000.00
Estate of Jim Trummer		-					
Account No.			misc/signature loan				1,000,000.00
Estate of Logan Young		-					
Account No.			personal guaranty				50,000.00
Estate of Russell Kyle		-					
Account No.			Judgment				298,472.45
Fifth Third Bank, NA 424 Church Street Nashville, TN 37219		-					
Account No.			personal guaranty				400,000.00
First National Bank of Talladega 120 East North Street Talladega, AL 35160		-					
Sheet no. <u>5</u> of <u>14</u> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims				Subtotal (Total of this page)			1,798,472.45

Sheet no. **5** of **14** sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

In re Donald R. DePriest

Case No. 14-13522

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E D E B T O R	H U S B A N D W I F E J O I N T O R	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
Account No.			November 3, 2008 Judgment Judgment/personal guaranty				
Fred C. Goad 112 Westwood Place Brentwood, TN 37027	X	-					191,598.00
Account No.			misc services/misc loan				
Gary L. Geeslin P.O. Box 621 Columbus, MS 39703		-					50,000.00
Account No.			signature loan				
George Newman P.O. Box 570 Vernon, AL 35592		-					500,000.00
Account No.			December 29, 2005 Guaranty of corporate debt				
Graceba Total Communications, Inc. 2660 Montgomery Highway Dothan, AL 36303	X	-					2,782,293.00
Account No.			November 2, 2005 personal loan				
Harrison Shull 714 Lynnbrook Road Nashville, TN 37215	X	-					177,000.00
Subtotal (Total of this page)							3,700,891.00

Sheet no. 6 of 14 sheets attached to Schedule of
Creditors Holding Unsecured Nonpriority Claims

Subtotal
(Total of this page)

3,700,891.00

In re **Donald R. DePriest**

Case No. **14-13522**

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E D E B I T O R	H U S B A N D, W I F E, J O I N T, O R C O M M U N I T Y	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N D I S P U T E D	D I S P U T E D	AMOUNT OF CLAIM
Account No.			Judgment June 16, 2011 Judgment				42,431.83
Hill & Minyard, PA 1210 Office Park Drive, Ste. 301 Oxford, MS 38655		-					
Account No. xx3107			deficiency; foreclosed on collateral 2010				349,251.00
Home Bank f/k/a Britton & Koontz Bank 503 Kaliste Saloom Road Lafayette, LA 70508-4203		-					
Account No.			Judgment October 16, 2012 Judgment				364,330.61
J.D. Fields & Co., Inc. 55 Waugh Dirve, Ste. 1250 Houston, TX 77007	X	-					
Account No.			September 20, 2005 personal guaranty on loan				310,034.00
James L. Teel 500 North Interlochen Winter Park, FL 32789	X	-					
Account No.			Representing: James L. Teel				Notice Only
John W. Crowell, Esquire P.O. Box 1827 Columbus, MS 39703-1827							
Sheet no. 7 of 14 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims				Subtotal (Total of this page)			1,066,047.44

B6F (Official Form 6F) (12/07) - Cont.

In re **Donald R. DePriest**

Case No. **14-13522**

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B O R	Husband, Wife, Joint, or Community	D I S P U T E D	U N L I Q U I D A T E D	C O N T I N G E N T	AMOUNT OF CLAIM
		H W J C				
Account No.						
James Tatum 4700 Looney Sprigs Road Birmingham, AL 35243	X	-				88,500.00
Account No.						
John Prince	-					250,000.00
Account No.						
Justin Shelton 811 6th Ave. N. Columbus, MS 39701	X	-				299,399.00
Account No.						
Craig M. Geno, Esquire 787 Highland Colony Park Parkway Ridgeland, MS 39157						Notice Only
Account No.						
Lucius E. Burch, III 102 Woodmont Blvd., Suite 320 Nashville, TN 37205	-					548,000.00
Subtotal (Total of this page)						1,185,899.00

Sheet no. **8** of **14** sheets attached to Schedule of
Creditors Holding Unsecured Nonpriority Claims

In re Donald R. DePriest

Case No. 14-13522

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B T O R	H W J C	Husband, Wife, Joint, or Community	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
Account No.				November 23, 2005 personal guaranty on loan				
Lynette McCary 2109 Williamsburg Way Birmingham, AL 35223	X	-						177,000.00
Account No.				September 20, 2005 signature/personal guaranty				
Maritime Communications Group 81 Windsor Blvd. Columbus, MS 39702	X	-						141,323.00
Account No.				May 26, 2009 personal guaranty on loan				
Michael P. Dunn P.O. Box 589 Montgomery, AL 36124-1858	X	-						85,628.00
Account No.				misc services				
Mitchell, McNutt & Sams P.O. Box 7120 Tupelo, MS 38802-7120	-							90,000.00
Account No.				Judgment				
Oliver Phillips 81 Windsor Blvd. Columbus, MS 39702	-							9,133,230.00
Subtotal (Total of this page)								9,627,081.00

Sheet no. 9 of 14 sheets attached to Schedule of
Creditors Holding Unsecured Nonpriority Claims

Subtotal
(Total of this page)

9,627,081.00

In re **Donald R. DePriest**

Case No. **14-13522**

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B O R	Husband, Wife, Joint, or Community	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
		H W J C				
Account No.						Notice Only
John Crowell, Esquire Crowell, Gillis & Cooper, PLLC P.O. Box 1827 Columbus, MS 39703-1827		Representing: Oliver Phillips				
Account No. xxxx9560						2,350,000.00
Pinnacle Bank 150 Third Avenue South Nashville, TN 37201	X -	November 26, 2007 loan/guaranty				
Account No.						200,000.00
Priority One Bank P.O. Box 18409 Hattiesburg, MS 39402	-	deficiency				
Account No.						3,045,665.00
R. Hayne Hollis, III 116 Loftin Road Dothan, AL 36303	X -	December 29, 2005 personal guaranty				
Account No.						900,000.00
Regions Bank Attn: Bankruptcy Dept. P.O. Box 10063 Birmingham, AL 35202-0063	-	deficiency personal guaranty				
Subtotal (Total of this page)						6,495,665.00

Sheet no. **10** of **14** sheets attached to Schedule of
Creditors Holding Unsecured Nonpriority Claims

In re **Donald R. DePriest**

Case No. **14-13522**

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E D E B T O R	H W J C	Husband, Wife, Joint, or Community	C O N T I N G E N T	U N L I Q U A T E D	D I S P U T E D	AMOUNT OF CLAIM
			DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.				
Account No.			Judgment				
Republic Bank & Trust 601 S. Hurstbourne Lane Louisville, KY 40222		-					382,268.00
Account No.			Representing: Republic Bank & Trust				Notice Only
Jones Walker, LLP Attn: Chad J. Hammons P.O. Box 427 Jackson, MS 39205							
Account No.			Judgment June 15, 2010 Judgment/personal guaranty				
Retzer Resources, Inc. 1215 S. Main Street Greenville, MS 38701		X -					250,000.00
Account No.			misc/signature loan				
Rhonda Wallace 1615 Cooper Creek Lane Franklin, TN 37064-9336		-					500,000.00
Account No.			misc unsecured debt				
Richard Schwartz		-					500,000.00
Sheet no. 11 of 14 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims							
Subtotal (Total of this page)							1,632,268.00

B6F (Official Form 6F) (12/07) - Cont.

In re **Donald R. DePriest**

Case No. **14-13522**

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E D E B T O R	H W J C	Husband, Wife, Joint, or Community	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N L I Q U A T E D	D I S P U T	AMOUNT OF CLAIM
Account No.				misc. unsecured debt				150,000.00
Roger Larson		-						
Account No.				misc./signature loan				50,000.00
Scott Polindexter P.O. Box 37 Inverness, MS 38753-0037		-						
Account No.				Judgment August 27, 2012 Judgment/guaranty				445,771.21
Sextons, Inc. 400 Water Street NE Decatur, AL 35601		-						
Account No.				Representing: Sextons, Inc.				Notice Only
Leland Murphree, Maynard Cooper &Gale PC 1901 6th Ave. North, Ste. 2400 Birmingham, AL 35243								
Account No.				misc unsecured loan				110,000.00
Steve Charles		-						
Subtotal (Total of this page)								755,771.21

Sheet no. **12** of **14** sheets attached to Schedule of
Creditors Holding Unsecured Nonpriority Claims

B6F (Official Form 6F) (12/07) - Cont

In re Donald R. DePriest

Case No. 14-13522

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B O R	H W J C	Husband, Wife, Joint, or Community	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N I C I D A T E D	D E B T O R	AMOUNT OF CLAIM
Account No. Timothy Butler 438 Aldridge Road Caledonia, MS 39740-9578		-		signature loan				500,000.00
Account No. Watson & Downs Investments, LLC 488 Ross Clark Circle Dothan, AL 36303		X		December 29, 2005 Guaranty for corporate debt				3,045,665.00
Account No. Western Nonwovens, Inc. 966 East Sandhill Avenue Carson, CA 90746		-		Judgment January 7, 2008 Judgment				118,000.00
Account No. Wilbur Colom P.O. Box 866 Columbus, MS 39703		-		signature loan				500,000.00
Account No. William Frist 1216 Canterbury Drive Nashville, TN 37205		-		Judgment May 13, 2011 Judgment				251,671.00
Subtotal (Total of this page)								4,415,336.00

Sheet no. 13 of 14 sheets attached to Schedule of
Creditors Holding Unsecured Nonpriority Claims

Subtotal
(Total of this page)

4,415,336.00

B6F (Official Form 6F) (12/07) - Cont.

In re Donald R. DePriest

Case No. 14-13522

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B O R	H U S B A N D W I F E J O I N T O R	H U S B A N D W I F E J O I N T O R	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
Account No.				personal guaranty				250,000.00
William Isaacson 5301 Wisconsin Ave. N.W. Washington, DC 20015	X	-						
Account No.								
Account No.								
Account No.								
Account No.								
Account No.								
Subtotal (Total of this page)								250,000.00
Total (Report on Summary of Schedules)								36,693,896.12

Sheet no. 14 of 14 sheets attached to Schedule of
Creditors Holding Unsecured Nonpriority Claims

In re Donald R. DePriest

Case No. 14-13522

Debtor

SCHEDULE H - CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR
Lucius E. Burch, III 102 Woodmont Bldv., Suite 320 Nashville, TN 37205	Pinnacle Bank 150 Third Avenue South Nashville, TN 37201
Maritime Communications/Land Mobile, LLC P.O. Box 1076 Columbus, MS 39703	Justin Shelton 811 6th Ave. N. Columbus, MS 39701
Maritime Communications/Land Mobile, LLC P.O. Box 1076 Columbus, MS 39703	Michael P. Dunn P.O. Box 589 Montgomery, AL 36124-1858
Maritime Communications/Land Mobile, LLC P.O. Box 1076 Columbus, MS 39703	Harrison Shull 714 Lynnbrook Road Nashville, TN 37215
Maritime Communications/Land Mobile, LLC P.O. Box 1076 Columbus, MS 39703	Douglas C. Sellers P.O. Box 589 Montgomery, AL 36101-0589
Maritime Communications/Land Mobile, LLC P.O. Box 1076 Columbus, MS 39703	Bruce A. Davis 7800 Indian Springs Drive Nashville, TN 37221
Maritime Communications/Land Mobile, LLC P.O. Box 1076 Columbus, MS 39703	Lynette McCary 2109 Williamsburg Way Birmingham, AL 35223
Maritime Communications/Land Mobile, LLC P.O. Box 1076 Columbus, MS 39703	James Tatum 4700 Looney Sprigs Road Birmingham, AL 35243
Maritime Communications/Land Mobile, LLC P.O. Box 1076 Columbus, MS 39703	James L. Teel 500 North Interlochen Winter Park, FL 32789
Maritime Communications/Land Mobile, LLC P.O. Box 1076 Columbus, MS 39703	Maritime Communications Group 81 Windsor Blvd. Columbus, MS 39702
Maritime Communications/Land Mobile, LLC P.O. Box 1076 Columbus, MS 39703	Fred C. Goad 112 Westwood Place Brentwood, TN 37027
Maritime Communications/Land Mobile, LLC P.O. Box 1076 Columbus, MS 39703	R. Hayne Hollis, III 116 Loftin Road Dothan, AL 36303

In re Donald R. DePriest

Case No. 14-13522

Debtor

SCHEDULE H - CODEBTORS
(Continuation Sheet)

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR
Maritime Communications/Land Mobile, LLC P.O. Box 1076 Columbus, MS 39703	Graceba Total Communications, Inc. 2660 Montgomery Highway Dothan, AL 36303
Maritime Communications/Land Mobile, LLC P.O. Box 1076 Columbus, MS 39703	Retzer Resources, Inc. 1215 S. Main Street Greenville, MS 38701
Maritime Communications/Land Mobile, LLC P.O. Box 1076 Columbus, MS 39703	Clark Bullock and Whitney Bullock 275 Oak Summitt Road Millbrook, NY 12545
Maritime Communications/Land Mobile, LLC P.O. Box 1076 Columbus, MS 39703	Watson & Downs Investments, LLC 488 Ross Clark Circle Dothan, AL 36303
Maritime Communications/Land Mobile, LLC P.O. Box 1076 Columbus, MS 39703	William Isaacson 5301 Wisconsin Ave. N.W. Washington, DC 20015
Maritime Communications/Land Mobile, LLC P.O. Box 1076 Columbus, MS 39703	David Shelton 1602 Forest Hill Drive Columbus, MS 39701
Maritime Communications/Land Mobile, LLC P.O. Box 1076 Columbus, MS 39703	Bart Wise 101 Arrington Blvd Columbus, MS 39702
Penelore Corporation P.O. Box 1076 Columbus, MS 39703	J.D. Fields & Co., Inc. 55 Waugh Drive, Ste. 1250 Houston, TX 77007

EXHIBIT 3
DECLARATION OF PATRICK TRAMMELL

It is my belief that the portions of the 4 geographic licenses that are not subject to pending deals and would be assigned to Choctaw pursuant to *Second Thursday* would be worth approximately [REDACTED]. This value is a reasonable approximation based on an independent valuation and recent sales transactions. The sale of a sizable portion of this spectrum would permit Choctaw to repay creditors fully and operate the remaining licenses in full compliance with the FCC's rules.

These geographic licenses comprise approximately 161.7 million MHz/pops, which represents the approximately 186 million MHz/pops estimated by the FCC as covered by the licenses at the time of auction, less the MHz pops being sold as part of the pending transactions previously referenced. A Fair Market Valuation referenced during the MCLM bankruptcy proceeding and prepared by an independent third party – Bond & Pecaro – for an MCLM creditor in 2008 estimated the value of the licenses to be [REDACTED]. The Southern California Regional Rail Authority transaction recently approved by the Commission valued the spectrum at [REDACTED]. The proper value of the geographic licenses likely is midway between the SCRRA and Bond & Pecaro values [REDACTED].

Patrick Trammell
Chairman and Chief Executive Officer
Choctaw Telecommunications, LLC
Choctaw Holdings, LLC

November 9, 2015

REDACTED PUBLIC VERSION

CERTIFICATE OF SERVICE

I, Paula M. Lewis, do hereby certify that on this 9th day of November 2015, the foregoing Motion for Leave and redacted Supplement to Choctaw's Petition for Reconsideration were filed via ECFS and served by first class mail, postage prepaid, on the following persons:

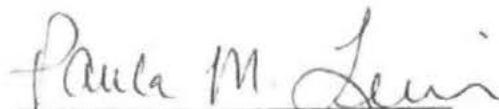
Pamela A. Kane
Investigations and Hearing Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W., Room 4-C330
Washington, DC 20554

Sandra DePriest
Maritime Communications/Land Mobile LLC
510 N. 7th St.
Columbus, MS 39701

Michael Engel
Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W., Room 4-C366
Washington, DC 20554

Warren Havens
2509 Stuart Street
Berkeley, CA 94705

Robert J. Keller
Law Offices of Robert J. Keller, P.C.
P.O. Box 33428
Washington, DC 20033
Counsel for Maritime Communications/ Land
Mobile LLC


Paula M. Lewis

ATTACHMENT B

REDACTED PUBLIC VERSION

EXHIBIT 3
DECLARATION OF PATRICK TRAMMELL

I, Patrick Trammell, hereby declare as follows:

It is my belief that the portions of the 4 geographic licenses that are not subject to pending deals and would be assigned to Choctaw pursuant to *Second Thursday* would be worth approximately [REDACTED]. This value is a reasonable approximation based on an independent valuation and recent sales transactions. The sale of a sizable portion of this spectrum would permit Choctaw to repay creditors fully and operate the remaining licenses in full compliance with the FCC's rules.

These geographic licenses comprise approximately 161.7 million MHz/pops, which represents the approximately 186 million MHz/pops estimated by the FCC as covered by the licenses at the time of auction, less the MHz pops being sold as part of the pending transactions previously referenced. A Fair Market Valuation referenced during the MCLM bankruptcy proceeding and prepared by an independent third party – Bond & Pecaro – for an MCLM creditor in 2008 estimated the value of the licenses to be [REDACTED]. The Southern California Regional Rail Authority transaction recently approved by the Commission valued the spectrum at [REDACTED]. The proper value of the geographic licenses likely is midway between the SCRRA and Bond & Pecaro values [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Patrick Trammell
Chairman and Chief Executive Officer
Choctaw Telecommunications, LLC
Choctaw Holdings, LLC

November 9, 2015

ATTACHMENT C

DECLARATION OF PATRICK TRAMMELL

I, Patrick Trammell, hereby declare as follows:

If *Second Thursday* relief is granted, Choctaw intends to fully comply with the Federal Communications Commission's ("Commission") rules. It is my belief that sufficient funds can be generated from the sales of certain of the former Maritime Communications/Land Mobile, LLC ("MCLM") licenses to fully repay the unsecured creditors.

In addition, Choctaw has solicited bids to buildout MCLM's geographic licenses and is fully prepared to construct operational systems in areas covered by licenses that are not sold to repay creditors.

Moreover, neither I, nor any of the other secured creditors that formed Choctaw, played any role in the management of MCLM or the development and/or implementation of the alleged bidding conduct that led to issuance of a Hearing Designation Order against MCLM. Nor were we aware that MCLM had engaged in potential bidding misconduct prior to the Commission's inquiry into the issue.

Donald and Sandra DePriest played no role in developing or negotiating the Reorganization Plan submitted to and approved by the MCLM Bankruptcy Court.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

/s/ Patrick Trammell
Patrick Trammell
Chairman and Chief Executive Officer
Choctaw Telecommunications, LLC
Choctaw Holdings, LLC

February 11, 2016

ATTACHMENT D

REDACTED

ATTACHMENT E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

**APPLICATION TO ASSIGN LICENSES FROM
MARITIME COMMUNICATIONS/LAND
MOBILE, LLC, DEBTOR-IN-POSSESSION, TO
CHOCTAW HOLDINGS, LLC**

)
)
) WT Docket No. 13-85
) File No. 0005552500
)
)
)

For Commission Consent to the Assignment of Various
AMTS Authorizations

To: Marlene H. Dortch, Secretary
Chief, Wireless Telecommunications Bureau

**REPLY COMMENTS AND OPPOSITION TO PETITIONS
TO DENY**

**CHOCTAW TELECOMMUNICATIONS, LLC
CHOCTAW HOLDINGS, LLC**

Robert G. Kirk
J. Wade Lindsay
Lawrence J. Movshin
Mary N. O'Connor

WILKINSON BARKER KNAUER, LLP
2300 N Street, NW Suite 700
Washington, DC 20037
202.783.4141

Their Attorneys

May 30, 2013

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SUMMARY

Choctaw Telecommunications, LLC and Choctaw Holdings, LLC (hereinafter collectively “Choctaw”) hereby oppose the two petitions to deny filed against the captioned application (“Application”) and reply to opposing comments. As discussed in more detail below, none of the aforementioned filings provide a basis for denying the Application pursuant to the Commission’s *Second Thursday* doctrine. Choctaw thus urges expeditious grant of the Application.

At its core, the instant Application raises a simple question: whether the Commission will apply its policies and precedent to allow parties to effectuate the bankruptcy plan approved by the United States Bankruptcy Court, Northern District of Mississippi (the “Bankruptcy Court”). It is beyond dispute that there are numerous creditors with substantial claims on the assets of Maritime Communications/Land Mobile, LLC, Debtor-in-Possession (“MCLM”). The recovery of these creditors depends upon maximizing the value of MCLM’s assets, including MCLM’s various licenses.

To that end, there were lengthy, detailed, arms-length negotiations involving MCLM, the Official Committee of Unsecured Creditors (“Creditors’ Committee”), the United States Trustee for Region 5, and other interested parties to craft a plan that would maximize recovery by the MCLM creditors. The Creditors’ Committee, among other things, closely considered plans proposed by Council Tree Investors, Inc. (“CTI”) and Choctaw to obtain MCLM’s licenses and repay MCLM’s creditors.

Ultimately, *all classes of MCLM’s creditors voted to approve the Choctaw Plan* (“Plan”) over the CTI Plan. Among other things, the Choctaw Plan:

- Lessened the rights of secured creditors to ensure that repayment of unsecured creditors would occur more quickly;
- Implemented an independent Liquidating Agent to oversee repayment to unsecured creditors and to ensure that Choctaw performs all obligations required under the terms of the Plan;
- Granted a stock pledge in favor of the Liquidating Agent, which effectively converts the unsecured creditors of MCLM into secured creditors of Choctaw; and
- Provided specific provisions whereby Sandra and Donald DePriest (collectively the “DePriests”) – the only two individuals identified as potential wrongdoers in a Commission Hearing Designation Order – would receive no proceeds or direct benefit from the sale of licenses or otherwise, would have no role in Choctaw, and would have no role with the operation or sale of the AMTS licenses going forward.

After the affirmative vote of the majority of all classes in favor of the Choctaw Plan, CTI withdrew its proposal. The Bankruptcy Court confirmed the Plan after several days of hearings in which the Commission, the Creditors’ Committee, and other entities participated. The Bankruptcy Court approved the Plan as being in the interest of the creditors, contingent upon Commission approval of the assignment of MCLM’s licenses to Choctaw. Choctaw now stands

before the Commission seeking to effectuate the Plan. If the instant transaction is not approved, the Bankruptcy Court's decision, as well as the clearly expressed desires of the vast majority of creditors, would be frustrated and innocent creditors would be harmed as a direct result.

Under *Second Thursday*, the Commission will terminate a pending hearing and permit the licensee to assign its licenses to a qualified third-party, if the following three factors are satisfied: (i) the licensee designated for hearing is in bankruptcy; (ii) the individual(s) charged with misconduct would have no part in the proposed future operations of the licensee; and (iii) the individual(s) charged with misconduct would derive no benefit from the transfer, or only a minor benefit which is outweighed by equitable consideration in favor of innocent creditors. Each of these criteria is satisfied here.

Several parties have filed comments in support of the Application, including critical infrastructure providers, several individual creditors, and the Liquidating Agent. Nevertheless, a few parties oppose the Application. These parties offer no credible evidence to suggest that implementation of the Plan would not serve the public interest by allowing MCLM's creditors the best chance for recovery. These parties instead rely on spurious and unsubstantiated allegations that the Plan was somehow improperly tainted with "insider" negotiations, that the DePriests will somehow exercise control of the MCLM licenses even after assignment to Choctaw, or that they will somehow enjoy inappropriate benefits arising from implementation of the Plan. These allegations are made despite multiple provisions of the Plan which prevent any involvement by the DePriests and require the appointment of an independent Liquidating Agent to ensure compliance with the terms of the Plan. In addition, there are sworn declarations by the principal of MCLM – Sandra DePriest – and her spouse stating that they will receive no benefit and will have no future role with regard to the licenses. A supplemental sworn declaration from Choctaw management also states that the DePriests will receive no benefit and will have no future role with regard to the licenses.

The allegations made in opposition to the Application are highly speculative, unsustainable, and do not give rise to substantial or material questions of fact regarding whether assignment of the licenses would be in the public interest. The simple facts are that Choctaw is comprised of some, but by no means all, of MCLM's creditors. The members of Choctaw are upstanding members of the business community whose qualifications to hold Commission licenses have not been challenged. Choctaw, in arms-length negotiations with the Creditors' Committee put together the Plan that MCLM's creditors and the Bankruptcy Court all recognized provided the best chance for allowing the creditors to recover.

As demonstrated in the Application and herein, the DePriests will not be involved in Choctaw's operations, nor will they enjoy any significant benefit from such operations, the disposition of the licenses, or the implementation of the Plan approved by the Bankruptcy Court. Thus, grant of the Application is justified pursuant to the Commission's well-established *Second Thursday* doctrine, which is expressly designed to ensure that the Commission accommodates bankruptcy law which, in turn, is designed to protect innocent creditors.

Allegations of wrong-doing by the DePriests, whose qualifications to hold Commission licenses are subject to a hearing, do not compel a contrary conclusion. Indeed, these allegations are immaterial to the Application process because these individuals will not be involved with the licenses after the transaction and will not substantially benefit from approval of the transaction.

Nor is there any merit to the argument that the Commission should not authorize assignment of certain of MCLM's incumbent, site-based licenses on the grounds that these licenses automatically cancelled under the Commission's rules. Both MCLM and Choctaw have sought a waiver of any construction and operational requirements that might otherwise impair the ability of MCLM to transfer licenses to Choctaw and the Commission's waiver standards are clearly met here.

In sum, the Commission should grant the Application and authorize assignment of the MCLM licenses to Choctaw, so that Choctaw may expeditiously implement the Plan confirmed by the Bankruptcy Court.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

**APPLICATION TO ASSIGN LICENSES FROM
MARITIME COMMUNICATIONS/LAND
MOBILE, LLC, DEBTOR-IN-POSSESSION, TO
CHOCTAW HOLDINGS, LLC**

)
)
) WT Docket No. 13-85
) File No. 0005552500
)
)
)

For Commission Consent to the Assignment of Various
AMTS Authorizations

To: Marlene H. Dortch, Secretary
Chief, Wireless Telecommunications Bureau

**REPLY COMMENTS AND OPPOSITION TO PETITIONS
TO DENY**

Choctaw Telecommunications, LLC and Choctaw Holdings, LLC (hereinafter collectively "Choctaw") hereby (i) oppose the two petitions to deny filed against the captioned application¹ by Warren Havens² and Council Tree Investors, Inc. ("CTI"), and (ii) reply to comments filed by Enterprise Wireless Alliance ("EWA"), Peter Harmer ("Harmer"), and the Enforcement Bureau ("EB").³ As discussed below, none of the aforementioned filings provide a

¹ Application to assign MCLM's AMTS licenses and leases to Choctaw filed January 23, 2013 (FCC ULS File No. 0005552500) (the "Application").

² Mr. Havens filed in his individual capacity and on behalf of the following entities he controls: Skybridge Spectrum Foundation, Environmental LLC, and Intelligent Transportation & Monitoring Wireless LLC.

³ EB's filing should be stricken as unauthorized. First, EB has no delegated authority to submit comments in licensing proceedings before the Wireless Telecommunications Bureau. *See* 47 C.F.R. §§ 0.311-0.317; Maritime Communications/Land Mobile, LLC, *Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing*, 26 FCC Rcd 6520 (2012) ("HDO"). Second, the filing attempts to critique the bankruptcy plan confirmed by the United States Bankruptcy Court, Northern District of Mississippi ("Bankruptcy Court"). The Commission was a creditor to the bankruptcy proceeding and was represented by the Department of Justice. If the Commission had concerns about the plan, it had ample opportunity and chose not to appeal the order confirming it. The Commission, and certainly not EB, does not have the authority to review and revisit bankruptcy court decisions. *See LaRose v. FCC*, 494 F.2d 1145, 1146 n.2 (D.C. Cir. 1974) ("*LaRose*").

basis for denying the Application pursuant to the Federal Communications Commission's ("Commission") long standing *Second Thursday* doctrine. Choctaw thus urges expeditious grant of the Application so that the process of repaying creditors can move forward.

BACKGROUND

Maritime Communications/Land Mobile, LLC, Debtor-in-Possession ("MCLM")⁴ holds a number of Automated Maritime Telecommunications Systems ("AMTS") site-based and geographic licenses ("Licenses").⁵ On April 19, 2011, the Commission designated for hearing a series of issues relating to the relationship of certain persons (Donald and Sandra DePriest) to MCLM and whether, based on these relationships and MCLM's conduct with regard to its Auction No. 61 applications, "[MCLM] is qualified to be and to remain a Commission licensee, and as a consequence thereof, whether any or all of its licenses should be revoked, and whether any or all of the applications to which Maritime is a party should be denied."⁶

On August 1, 2011, while the hearing was pending, MCLM filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court, Northern District of Mississippi (the "Bankruptcy Court"). Only two parties submitted plans to the Bankruptcy Court. It is noteworthy that neither plan offered a fixed, cash payment for the Licenses. Choctaw, whose ownership includes four of the more than one hundred twenty

⁴ MCLM hereinafter refers to Maritime Communications/Land Mobile, LLC, Debtor-in-Possession, as well as the pre-bankruptcy Maritime Communications/Land Mobile, LLC.

⁵ Comment Sought on Application to Assign Licenses Under Second Thursday Doctrine, Request for Waiver and Extension of Construction Deadlines, and Request to Terminate Hearing, *Public Notice*, 28 FCC Rcd 3358 (2013) ("*Public Notice*").

⁶ *HDO*, 26 FCC Rcd at 6521 (emphasis added) (citation omitted); *see also id.* at 6548. The specific MCLM authorizations and applications designated for hearing are listed in the *HDO*. *Id.* at 6553-54. While a number of site-based AMTS station licenses were also designated for hearing, *id.* at 6525 n.20 and 6546, Choctaw understands that some of these incumbent site-based AMTS licenses have been canceled or are in the process of being cancelled or deleted and, thus, are no longer relevant for purposes of the *HDO* and were not included in the instant Application.

MCLM creditors,⁷ and CTI submitted competing plans. Both plans were submitted for consideration by the entire creditor group. After extensive arms-length negotiations and a balloting process conducted pursuant to bankruptcy law, an overwhelming majority of creditors *from all classes* of MCLM's creditors approved the Choctaw plan which, among other things:

- Lessened the rights of secured creditors to ensure that repayment of unsecured creditors would occur more quickly;
- Implemented an Independent Liquidating Agent to oversee repayment to unsecured creditors and to ensure that Choctaw performs all obligations required under the terms of the Plan;
- Granted a stock pledge in favor of the Liquidating Agent, which effectively converts the unsecured creditors of MCLM into secured creditors of Choctaw;⁸ and
- Provided specific provisions whereby the DePriests would receive no proceeds or direct benefit from the sale of licenses or otherwise, would have no role in Choctaw, and would have no role with the operation of sale of the Licenses going forward.

As the Bankruptcy Court Judge noted in confirming the Choctaw plan: "I look at the votes – and that's another compelling thing – that have been presented by the tally of the ballots. *Every class voted to accept confirmation* by the respected requirements of the law."⁹

After the creditors overwhelmingly selected the Choctaw plan, a bankruptcy hearing was conducted with Petitioners Havens and CTI, as well as the Commission, all participating.¹⁰ On

⁷ The members of Choctaw are upstanding members of the business community whose character to hold licenses has never been challenged.

⁸ See Warren Averett, LLC Comments, WT Docket No. 13-85, at 2-5 (filed May 29, 2013). Warren Averett, LLC was designated as the Liquidating Agent by the Bankruptcy Court.

⁹ Transcript of Hearing at 187, *Maritime Communications/Land Mobile, LLC*, Case No. 11-13463-DWH, (Bankr. N.D. Miss. Nov. 15, 2012) ("Hearing Transcript") (emphasis added). Excerpts from the bankruptcy hearing transcript are attached as Exhibit A.

¹⁰ Havens and the Commission both were parties to the hearing. CTI submitted a competing proposal to the Bankruptcy Court and participated in pre-trial activities. CTI claimed that Choctaw would not be able to obtain *Second Thursday* relief expeditiously. There were well over one hundred different creditors eligible to vote. After every class of creditors voted in favor of the Choctaw proposal, rather than the CTI proposal, CTI withdrew its proposal on the eve of the hearing and exited the bankruptcy proceeding. It appears that, by filing a petition to deny,

November 15, 2012, after several days of hearings, the Bankruptcy Court confirmed the Chapter 11 reorganization plan submitted by Choctaw (hereinafter "Plan") which called for the assignment of MCLM's licenses to Choctaw upon Commission approval.

On January 23, 2013, MCLM and Choctaw filed the Application seeking approval to assign MCLM's licenses to Choctaw, and the Commission released a *Public Notice* requesting comment on the relief sought in the Application.

I. GRANT OF THE APPLICATION WILL SERVE THE PUBLIC INTEREST

Under Section 310(d) of the Communications Act of 1934, it is the Commission's responsibility to review potential assignments of Commission authorizations and to approve such transactions if they do not violate a statute or rule, and if, after weighing "the potential public interest harms of the [transaction] against the potential public interest benefits," it concludes that, "on balance," the transfer "serves the public interest, convenience and necessity."¹¹ This standard involves balancing potential public interest benefits from the transfer against potential harms.¹²

Here, the Application demonstrates that the assignment of the Licenses to Choctaw will generate substantial public interest benefits and opponents to the transaction do not provide any compelling arguments that a grant will cause serious, countervailing public interest harms. Put

CTI is attempting to delay expeditious processing of the Application in an attempt to re-open the bankruptcy process in the hopes that its previously rejected proposal will get a new life.

¹¹ Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp., Transferee, *Memorandum Opinion and Order*, 15 FCC Rcd 9816, 9820 (2000); Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc., *Memorandum Opinion and Order*, 24 FCC Rcd 8741, 8745-46 (2009).

¹² See General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee For Authority to Transfer Control, *Memorandum Opinion and Order*, 19 FCC Rcd 473, 483 (2004); Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee, *Memorandum Opinion and Order*, 17 FCC Rcd 23246, 23255 (2002).

simply, the Licenses will be assigned from MCLM, a bankrupt entity that has no money to spend to further extend its business operations and lacks the fiscal capability to continue in business, to Choctaw, an entity that stands ready, willing, and able to advance the use of the Licenses in the public interest.¹³ As detailed in the Application¹⁴ and the comments of supporting parties,¹⁵ the public interest benefits include: accommodating “the national policy underlying other federal laws, such as the bankruptcy laws pertinent here;”¹⁶ promoting good spectrum policy through the continued and new use of the underlying spectrum;¹⁷ conserving the Commission’s administrative resources;¹⁸ furthering positive train control;¹⁹ and furthering the provision of safe and efficient energy services to the American public by Critical Infrastructure Industry companies.

¹³ See Application at Description of Transaction pp. 12-13.

¹⁴ See *id.* at 12-16.

¹⁵ See Comments of Southern California Regional Rail Authority, WT Docket No. 13-85, at 4-8 (May 9, 2013) (“SCRRA Comments”); Comments of Spectrum Bridge, Inc., WT Docket No. 13-85, at 1 (May 8, 2013); Joint Comments of Atlas Pipeline Mid-Continent LLC, Dixie Electric Membership Corporation, Inc., Enbridge Energy Company, Inc., EnCana Oil & Gas (USA) Inc., and Jackson County Rural Electric Membership Corporation, WT Docket No. 13-85, at 7-14 (May 9, 2013) (hereinafter “CII Companies’ Comments”); Comments of Shenandoah Valley Electric Cooperative Comments, WT Docket No. 13-85, at 1-4 (May 9, 2013) (“Shenandoah Valley Comments”).

¹⁶ San Diego Television, Inc., *Memorandum Opinion and Order*, 11 FCC Rcd 14689, 14693 (1996) (citing *LaRose*, 494 F.2d at 1146 n.2).

¹⁷ See, e.g., *Second Thursday (WWGM), Nashville, Tenn. For Renewal of License, Memorandum Opinion and Order*, 25 F.C.C.2d 112, 115 (1970) (“*Second Thurs. Recon. Order*”) (including among the “substantial equities” weighing in favor of relief the “public interest in the resumption of service” on the spectrum in question).

¹⁸ See Applications for Assignment of Licenses WSTX(AM) and WSTX-FM, Christiansted, U.S. Virgin Islands, *Memorandum Opinion and Order*, 25 FCC Rcd 7591, 7599 (2010).

¹⁹ See Comments of Association of American Railroads, WT Docket No. 13-85, at 1-3 (May 9, 2013).

The Petitioners and commenters opposing the Application do not offer any compelling arguments that contradict any of these significant public interest benefits.²⁰ Indeed, Choctaw has been hard pressed to find even a cite to Section 310(d) in the petitions and comments opposing the Application, much less a compelling challenge to the obvious public interest benefits of this transaction. In sum, grant of the Assignment Application will serve the public interest as required under Section 310(d) of the Communications Act.²¹

II. ALL OF THE *SECOND THURSDAY* REQUIREMENTS ARE SATISFIED AND MCLM'S AMTS LICENSES SHOULD BE ASSIGNED TO CHOCTAW

Absent serious public interest challenges to the Applications, the Petitions and comments opposing the Application turn primarily on the technical argument that the Commission should deny the application pursuant to the *Jefferson Radio* decision, which established a policy that the Commission generally will not grant assignment applications when the licenses are subject to a hearing involving the qualifications of the license holder.²² The Commission, however, has long recognized that rigid application of *Jefferson Radio* will not necessarily serve the public interest, particularly in cases involving bankruptcy where the need to protect innocent creditors of the licensee is more important than engaging in a lengthy hearing as to the alleged bad actor's character. To this end, the Commission recognized an exception to *Jefferson Radio* – the *Second*

²⁰ For example, some parties suggest that allowing MCLM to assign its incumbent, site-based licenses to Choctaw would be contrary to the public interest. See Comments of the Enforcement Bureau, WT Docket 13-85, at 26-27 (filed May 9, 2013) (“EB Comments”); Comments of the Enterprise Wireless Alliance, WT Docket No. 13-85 at 2-4 (filed May 9, 2013) (“Enterprise Wireless Comments”). As discussed below, this argument is wholly without merit.

²¹ 47 U.S.C § 310(d).

²² *Jefferson Radio Co. v. FCC*, 340 F.2d 781, 783 (D.C. Cir. 1964).

Thursday doctrine – which makes appropriate accommodation for bankruptcy law and the protection of innocent creditors.²³

Under *Second Thursday*, the Commission typically will terminate any pending hearing and permit the licensee to assign its licenses to a qualified third-party, if the following three factors are satisfied: (i) the licensee designated for hearing is in bankruptcy; (ii) the individual(s) charged with misconduct would have no part in the proposed future operations of the licensee; and (iii) the individual(s) charged with misconduct would derive no benefit from the transfer, or only a minor benefit which is outweighed by equitable consideration in favor of innocent creditors.²⁴ Each of these criteria is satisfied here.²⁵ Moreover, grant of the Application will further the objectives of the Bankruptcy Court.

A. MCLM Has Obtained Bankruptcy Protection

The following facts are undisputed: on August 1, 2011, while the hearing was pending, MCLM filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code; the

²³ *Second Thurs. Corp. (WWGM), Nashville, Tenn. For Renewal of License*, 22 F.C.C.2d 515 (1970) (“*Second Thurs.*”), *recon. granted in part*, 25 F.C.C.2d 112 (1970); *LaRose*, 494 F.2d at 1146 n.2.

²⁴ *Second Thurs.*, 22 F.C.C.2d at 516; *see Second Thurs. Recon Order*, 25 F.C.C.2d at 114-15.

²⁵ Some parties spend considerable time challenging the character of Mr. DePriest based on past conduct. *See* Peter Harmer Comments, WT Docket No. 13-85, at 2-19 (filed May 9, 2013); Petition of Council Tree Investors, Inc. to Deny, WT Docket No. 13-85, at 3-9 (filed May 9, 2013) (“CTI Petition”); Petition of SkyTel-1 Entities to Dismiss or Deny, and Comments, WT Docket No. 13-85, at 10 (filed May 9, 2013) (“Havens Petition”). Such issues are irrelevant to the *Second Thursday* analysis because, in order to obtain relief pursuant to this doctrine, Mr. DePriest can have no future role with regard to the Licenses and can receive no significant benefit from the proposed transaction. As discussed below, each of these factors is satisfied here. Moreover, *Second Thursday* looks at benefits that will result from grant of the Application, not benefits that a wrongdoer may have received prior to such grant. *See Second Thurs.*, 22 F.C.C.2d at 515; *see Second Thurs. Recon Order*, 25 F.C.C.2d at 114-15.

Bankruptcy Court approved the Plan on November 15, 2012;²⁶ and the Application seeks to effectuate the Plan. Thus, the Application satisfies the first of the *Second Thursday* criteria.

B. The DePriests Will Have No Role With Choctaw

The Application satisfies the second prong of the *Second Thursday* doctrine because the DePriests – the alleged wrongdoers identified in the *HDO* – will have no role in Choctaw and will play no future role with respect to any of the Licenses subject to the hearing, or any licenses currently held by MCLM. The pending Application contains a declaration from Patrick Trammell, Managing Member of Choctaw, stating under penalty of perjury that the DePriests will have no future role with the Licenses.

Moreover, during the bankruptcy hearing, the Bankruptcy Judge reviewed numerous exhibits, including the Choctaw proposal, and lengthy testimony. Although not binding on the Commission, the Bankruptcy Judge determined that it was “pretty undisputed as far as the proof that I’ve heard today” that the DePriests would have no future role with Choctaw.²⁷

Nevertheless and despite the fact that the Commission was represented in the bankruptcy hearing, EB now claims that additional evidence is necessary to establish that the DePriests will have no ongoing role with the Licenses.²⁸ Attached hereto as Exhibit B is a Supplemental Declaration from Patrick Trammell stating, among other things:

- Neither the DePriests nor any entity with which the DePriests are affiliated will have any involvement with the Licenses through any future transactions; and
- Choctaw will not allow Critical RF to use the spectrum associated with the Licenses.²⁹

²⁶ See Order Confirming Plan of Reorganization, *Maritime Communications/Land Mobile, LLC*, Case No. 11-13463-DWH, (Bankr. N.D. Miss. Jan. 11, 2013) (“Confirmation Order”).

²⁷ Hearing Transcript at 183 (“Hearing Transcript”).

²⁸ EB Comments at 12-13.

²⁹ See Exhibit B; see also EB Comments at 13.

Based on the Application and the foregoing, the DePriests will play no future role with respect to any of the Licenses currently held by MCLM.

C. The DePriests Will Not Realize Any Significant Benefit From The Transaction

The Application satisfies the third – and final – prong of the *Second Thursday* doctrine because the DePriests will not realize any significant benefit from the assignment of the Licenses to Choctaw or Choctaw's management of the Licenses following the assignment. The Plan specifically identifies the parties – *i.e.*, the creditors – that will benefit from the proposed assignment. Mr. and Mrs. DePriest are not listed as creditors and will not receive any portion of the purchase price associated with the operation or sale of the Licenses.³⁰ Further, the Plan requires an independent Liquidating Agent who, in turn, is responsible for ensuring that any funds are distributed to creditors in the manner approved by the Court. Thus, the Plan itself makes clear that the DePriests will not realize any significant benefit from approval of the instant transaction.³¹

³⁰ Moreover, no entity in which the DePriests hold an ownership or management interest is listed as a creditor. Despite EB's erroneous assertion that the DePriests may receive \$6.8 million pursuant to the Plan (EB Comments at n.53), neither the DePriests nor any entity owned or controlled by the DePriests will receive any distributions under the Plan. See *Confirmation Order* at 11 ("Don DePriest, Sandra DePriest and any entities under their ownership and/or control shall not participate in, nor shall they receive any recovery or distributions made by the Administrative Agent/Liquidating Agent under or in connection with the Plan."). The Plan provides that the Liquidating Agent may object to claims, including the claims of the DePriests and any entities that the DePriests own. See *Confirmation Order*, at 8 ("notwithstanding anything to the contrary in the Plan, the Debtor and the Liquidating Agent retain the sole right to object to Claims through and including 90 days following first FCC approval of the transfer of any FCC Licenses to Choctaw and Holdings."). Thus, under the Plan, the only creditors that will receive a distribution are creditors that have valid claims; which specifically excludes the DePriests. Finally, as noted in the DePriests' declarations attached to MCLM's response which is being filed concurrently, they have waived claims totaling approximately Seven Million Dollars.

³¹ CTI seeks to expand this factor to include benefits a wrongdoer previously received and that are not contingent upon approval of an application seeking *Second Thursday* relief. See CTI Petition at 2-9. Such factors are not relevant to the *Second Thursday* doctrine which evaluates

To reinforce this point, the Supplemental Declaration of Patrick Trammell states that “the DePriests will not receive any proceeds from any future sales and assignments of the Licenses by Choctaw to third parties.”³² Further, Choctaw has been informed that declarations from Sandra and Donald DePriest will accompany MCLM’s response and state that they have affirmatively waived any benefit from the proceeds of future sales transactions associated with the subject Licenses.³³

1. THE GUARANTEES OF DONALD DEPRIEST DO NOT CONFER ANY SIGNIFICANT BENEFIT

Some parties claim that an impermissible benefit may accrue to the DePriests as a result of an alleged release of personal loan guarantees provided by Mr. DePriest to some of MCLM’s many creditors.³⁴ There has been no such release. The Plan clearly states: “claims by any person or entity against any other person or entity guaranteeing or otherwise liable for the obligations of the Debtor shall not be impaired as a result of the confirmation of the Plan or its effectiveness.”³⁵ Thus, if the Plan does not raise sufficient revenue to pay MCLM’s creditors holding these guarantees in full, those creditors retain the ability to enforce the guarantees.

benefits that will accrue only if the proposed transaction is approved. *See Second Thurs.*, 22 F.C.C.2d at 515; *see Second Thurs. Recon Order*, 25 F.C.C.2d at 114-15. Moreover, CTI’s “facts” are wrong. It claims that Mr. DePriest received a benefit when Southeastern Commercial Finance (“SCF”) forgave his \$438,102 debt in return for his stake in SCF. CTI Petition at 7-8. Mr. DePriest’s stake in SCF was worth more than the debt, so he received no benefit. *See* Exhibit C, Declaration of Anthony Vincent LaRocca, SCF Auditor. To the extent certain CTI arguments relate to benefits that it claims should have been part of the bankruptcy “clawback” process, these concerns should have been raised with the Bankruptcy Court, not the Commission. CTI Petition at 8.

³² Exhibit B. This language addresses concerns raised by EB. *See* EB Comments at 14-15.

³³ This language addresses concerns raised by EB. *See* EB Comments at 15.

³⁴ *See id.* at 15-16; Havens Petition at 6-9; CTI Petition at 3, 5-6.

³⁵ Confirmation Order at 19, Exh. A. Only two of Choctaw’s investors have guarantees from the DePriests: Watson & Downs, LLC and Hayne Hollis. Both of these creditors combined have a total guaranteed debt of \$5,569,846. Pursuant to the Plan, all of the Choctaw investors assigned their claims against MCLM to Choctaw, and Choctaw in-turn credit bid those claims in

Moreover, even if there was a release involved, the Commission has previously determined that the elimination of potential secondary liability is an incidental benefit that does not preclude *Second Thursday* relief.³⁶ EB cites to *Capital City Communications, Inc.* and *Mid-State Broadcasting Co.* for the proposition that *Second Thursday* relief can be denied where (i) the guarantees of alleged wrongdoers would be relieved and (ii) the relieved guarantees would constitute 20% or more of the purchase price.³⁷ These cases do not support denial of *Second Thursday* in this instance.

In each of the aforementioned cases, the alleged wrongdoer's guarantee was forgiven in situations where the purchase price was less than the debts owed.³⁸ Here, as discussed above, Mr. DePriest's guarantees have not been forgiven. If there is a shortfall, the creditors unaffiliated with Choctaw are free to pursue Mr. DePriest's guarantees. Although Choctaw has assumed the risk as to the value of the Licenses, various parties have stated that the value of the

consideration of receiving the Licenses. See *id.* at 10. The effect of Choctaw's credit bid of the claims of the Choctaw investors is not a forgiveness of the DePriests' guarantees or a release of the DePriests' guarantees. Rather, Choctaw's credit bid constituted a payment-in-full of the Choctaw investors' claims against MCLM, just as if MCLM's assets had been sold for cash. See *Fire Eagle, LLC v. Bischoff (In re: Spillman Dev. Group, Ltd.)*, 710 F.3d 299 (5th Cir. 2013). Upon the satisfaction of the Choctaw investors' claims against MCLM, the guarantees are not enforceable; the balance of the underlying debt has been fully collected and cannot be collected a second time. *Id.*

³⁶ See, e.g., *KOZN FM Stereo 99 LTD., Memorandum Opinion and Order*, 6 FCC Rcd 257, 257 (1991); *Second Thurs. Recon Order*, 25 F.C.C.2d at 114-15; *Pyle Communications of Beaumont, Inc., Memorandum Opinion and Order*, 4 FCC Rcd 8625, 8626 (1989) ("Pyle Order").

³⁷ EB Comments at 15-16 (citing *Mid-State Broadcasting Co.*, 61 F.C.C.2d 196, 197 (1976) and *Capital City Communications, Inc.*, 33 F.C.C.2d 703, 712 (1972)).

³⁸ *Capital City Communications, Inc. For Renewal of License of Radio Station WLUX, Baton Rouge, La., Memorandum Opinion and Order*, 33 F.C.C.2d at 703, 712 (1972) ("Capital City Order"); *Mid-State Broadcasting Company (WHLW), Lakewood, New Jersey for Renewal of License, Memorandum Opinion and Order*, 61 F.C.C.2d at 196, 197 (payment of \$290,000 for assets where bankruptcy debt exceeded \$520,000).

Licenses should exceed the amount of MCLM's debt.³⁹ Thus, the present situation is completely distinguishable from the cases relied upon by EB.

Moreover, the *Capital City* decision cited by EB should be given no precedential value. This case led to the seminal *LaRose* decision in which the United States Court of Appeals for the D.C. Circuit warned:

Administrative agencies have been required to consider other federal policies, not unique to their particular area of administrative expertise, when fulfilling their mandate to assure that their regulatees operate in the public interest. . . . [A]gencies should constantly be alert to determine whether their policies might conflict with other federal policies and whether such conflict can be minimized.

The court then stated that the Commission must "accommodate[] the policies of federal bankruptcy law with those of the Communications Act."⁴⁰

Against this backdrop, although the court did not specifically rule on the "first proposed sale" at issue in the case relied on by EB,⁴¹ it stated:

Application of *Second Thursday* requires an ad hoc balancing of the possible injury to regulatory authority that might flow from wrongdoers' realization of benefit against the public interest in innocent creditors' recovery from the sale and assignment of the license to a qualified party. *The first proposed sale and assignment was very beneficial to Capital's creditors and appeared to benefit the principal wrongdoers of Capital only indirectly.* . . .⁴²

³⁹ EB comments are inconsistent. Logically, one cannot have it both ways and argue that the transaction should be denied because: (i) it would produce a windfall (an argument that is, in any event not relevant under *Second Thursday*); or (ii) it would produce a shortfall implicating the guarantees of Mr. DePriest. See EB Comments at 10-11 (implying that creditors may not get paid in full); *id.* at 16-19 (Choctaw will receive a "windfall"). If the value of the licenses exceeds the MCLM debt, then grant of the Application would provide no benefit to Mr. DePriest because the debts would be paid in full and the guarantee would never be triggered.

⁴⁰ *LaRose*, 494 F.2d at 1146 n.2.

⁴¹ See *Capital City Order*, 33 F.C.C.2d 703.

⁴² *LaRose v. FCC*, 494 F.2d at 1149 (emphasis added).

Post-*LaRose*, and consistent with the above-quoted language, the Commission has concluded that the “minor benefit” associated with the elimination of secondary liability is generally “outweighed by the equitable considerations favoring innocent creditors.”⁴³

2. INNOCENT CREDITORS WOULD BENEFIT SIGNIFICANTLY FROM GRANT OF THE APPLICATION

EB alleges that there is insufficient information in the Application to determine whether the proposed transaction will benefit innocent creditors.⁴⁴ This allegation demonstrates a misunderstanding of the differing roles played by the Bankruptcy Court and the Commission with regard to creditors.

The question of whether the Plan will benefit creditors is one for the Bankruptcy Court to resolve, which it did by confirming the Plan after a confirmation hearing.⁴⁵ As the Commission has noted, it “seeks, where possible within the framework of the requirements of the Communications Act, to accommodate the policies of the Bankruptcy Code and *the findings of bankruptcy courts*.”⁴⁶ It is “well-established precedent that the Commission should avoid creating conflicts over matters within a federal or state court’s jurisdiction.”⁴⁷

Under *Second Thursday*, bankruptcy courts evaluate the best interests of creditors and the Commission evaluates the future role and benefits that will flow to purported wrongdoers as a

⁴³ *Pyle Order*, 4 FCC Rcd at 8626.

⁴⁴ EB Comments at 7-12.

⁴⁵ *Cf. id.* at 8-12.

⁴⁶ New DBSD Satellite Services G.P., *Order*, 25 FCC Rcd 13664 (IB 2010) (citing *LaRose*, 494 F.2d 1145).

⁴⁷ George L. Miller, Memorandum Opinion and Order, 24 FCC Rcd 3471, 3472 (2009) (citing *Kralowec Children's Family Trust*, 12 FCC Rcd 19690 (MMB 1997) (Commission will not revisit issues previously considered and resolved by a bankruptcy court); *LaRose*, 494 F.2d at 1147 (Commission is obligated to protect innocent creditors as long as the transaction in question does not unduly interfere with objectives of the Communications Act)).

result of a proposed transaction, in this case Sandra and Donald DePriest.⁴⁸ By any objective standard, the Plan contemplates a full repayment of creditors, independent oversight to ensure such, and a priority payment (\$600,000) to unsecured creditors to the detriment of secured creditors. Consistent with *LaRose*, the Commission should not evaluate Bankruptcy Court determinations regarding the sufficiency of reorganization plans or creditor issues pursuant to *Second Thursday*.⁴⁹ To do so would be antithetical to the underlying purpose of the doctrine – to accommodate bankruptcy law.⁵⁰

To the extent Havens' claims that the creditors are not "innocent," the claim should be summarily rejected.⁵¹ The question of "innocent creditors" is an issue for the Bankruptcy Court unless the creditors were identified as potential wrongdoers by the Commission. As the Commission has noted:

[I]n the *Second Thursday* situation, the public interest benefits stem from the facts that (1) the transfer furthers the ends of the bankruptcy law by protecting innocent creditors, and (2) the transfer takes the station from the hands of a trustee in bankruptcy, who may be ill-equipped to operate the station. *The Commission's deterrence policy is preserved because the licensee's creditors, not the accused wrongdoers, derive the benefit from the transaction.*⁵²

None of the creditors entitled to benefits under the Plan, including those involved in Choctaw, were accused of wrongdoing in the *HDO*.

⁴⁸ *LaRose*, 494 F.2d at 1146 n.2; Shareholders of Stop 26 Riverbend, Inc., *Memorandum Opinion and Order*, 27 FCC Rcd 6516, 6524 (2012). The court already has resolved the creditor issues.

⁴⁹ *LaRose*, 494 F.2d at 1146 n.2.

⁵⁰ The Bankruptcy Court has the authority and the expertise necessary to make these determinations. EB's comments demonstrate why creditor issues are best left to the bankruptcy courts – arguing first that the Plan confirmed by the Bankruptcy Court will result in a windfall to Choctaw after all creditors are paid, and then arguing that the Plan may not result in payments sufficient to repay all creditors. EB Comments at 5, 8-12. EB cannot have it both ways.

⁵¹ See Havens Petition at 12-16.

⁵² *RKO General, Inc. (KHJ-TV)*, Los Angeles, California, *Memorandum Opinion and Order*, 3 FCC Rcd 5057, 5061 (1988).

Moreover, there was extensive testimony before the Bankruptcy Court on the issue of innocent creditors and potential benefits to Mr. DePriest. After reviewing the evidence, the Judge stated:

[A]re we to choose to punish legitimate creditors just so someone might get an indirect benefit? No. I agree with the witness who testified yesterday that said that's a small issue. And if these creditors are paid, then they ought to get paid and they certainly shouldn't be punished.⁵³

Accordingly, there is no basis for finding Choctaw or its members to be anything other than innocent, legitimate creditors.

D. There Are No Additional *Second Thursday* Factors

EB attempts to graft new requirements onto the Commission's *Second Thursday* precedent and then argue that the Application does not satisfy these new criteria. EB's arguments, however, are fatally flawed. The fact is that the three criteria above are the *only* factors used in a *Second Thursday* analysis and there is no legitimate basis for establishing new requirements.

1. THERE IS NO TRUSTEE REQUIREMENT

EB suggests that *Second Thursday* requires the use of a trustee.⁵⁴ Such a requirement has never been identified as a factor in *Second Thursday* cases. Moreover, the absence of a trustee here is purely a matter of form over substance and does not have the material significance EB implies.

⁵³ Hearing Transcript at 186.

⁵⁴ EB Comments at 7-8. Although there is no "trustee," there is a Liquidating Agent that is responsible for receiving all funds from transactions and paying creditors according to the Plan confirmed by the court. The Liquidating Agent also has a right to review future transactions and to object to claims.

Bankruptcy law recognizes the debtor-in-possession to be the equivalent of a trustee.⁵⁵

Pursuant to Section 1107 of the Bankruptcy Code, a debtor-in-possession has all of the rights and fiduciary obligations of a trustee.⁵⁶ Indeed, the terms “trustee” and “debtor in possession,” as used in the Bankruptcy Code, are essentially interchangeable.⁵⁷ Hence, by virtue of being a debtor-in-possession, MCLM operated not only as a business entity, but essentially as a trustee as well.⁵⁸ Because MCLM has the exact same obligations as a bankruptcy trustee, there is no functional difference between a bankruptcy trustee making an application to assign licenses, and MCLM making the Application to assign the Licenses. In short, the lack of a trustee in this case is a distinction without a difference and does not justify denying the Application.⁵⁹

⁵⁵ 11 U.S.C. § 1108 (providing that specifically “[u]nless the court, on request of a party in interest and after notice and a hearing, orders otherwise, the trustee may operate the debtor’s business”).

⁵⁶ The term “debtor in possession” refers to a debtor in a chapter 11 case for which no trustee has been appointed. See 11 U.S.C. § 1101(1). When no trustee is appointed, the Bankruptcy Code gives a debtor in possession the powers and duties of a trustee. *Id.* § 1107(a); FED. R. BANKR. P. 9001(10). See also *In re Marvel Entertainment Group, Inc.*, 140 F.3d 463, 474 (3d Cir. 1998).

⁵⁷ See *L.R.S.C. Co. v. Rickel Home Centers, Inc. (In re Rickel Home Centers, Inc.)*, 209 F.3d 291, 297 & n. 7 (3d Cir. 2000).

⁵⁸ See *Commodity Futures Trading Comm’n v. Weintraub*, 471 U.S. 343, 355 (1985) (citing *Wolf v. Weinstein*, 372 U.S. 633, 649-652 (1963)). CTI also implies that a trustee was necessary to avoid insider dealings and impermissible “horse trading.” See CTI Petition at 3, 5. CTI’s claim is baseless. There is nothing unusual about Ms. DePriest remaining in control of MCLM during the Bankruptcy Case. As discussed above, the Bankruptcy Code permits Ms. DePriest to remain in control of MCLM as debtor-in-possession and to act as the trustee throughout the Bankruptcy Case.

⁵⁹ EB also suggests that *Second Thursday* does not apply unless a third party offers to purchase the Licenses. EB is mistaken. *Second Thursday* relief has previously been granted where minority owners seek approval to acquire licenses from majority owners accused of wrongdoing. See *Seraphim Corporation, Memorandum Opinion and Order*, 4 FCC Rcd 8819, 8821 (1989). Moreover, Choctaw’s credit bid is equivalent to a cash bid.

2. SECOND THURSDAY DOES NOT INVOLVE AN ANALYSIS OF PROFITABILITY

EB also suggests that *Second Thursday* requires an analysis to ensure that the party obtaining the license from the bankrupt entity does not receive a “windfall.”⁶⁰ This argument is fundamentally speculative. EB cites to no Commission precedent defining what might constitute an improper “windfall.” More important, EB’s argument itself is premised on a set of assumptions EB makes regarding the value of the licenses and the erroneous assumption that transactions requesting *Second Thursday* relief must be devoid of profit potential.

Indeed, when the question of whether there would be a windfall was raised before the Bankruptcy Court, the Judge noted that it was difficult to value the Licenses and that “the existence of the Skytel [Havens] challenges at every level have certainly impacted the valuation of the spectrum.”⁶¹ The Judge also expressed skepticism about any windfall claims given that, by his calculation, the outstanding debt exceeded \$38 million:

We look to the question of windfall and you have to compare it to the risk involved. I thought Mr. Reardon was very candid in his testimony yesterday that when he valued the spectrum from zero to perhaps \$45 million – \$40-\$45 million and then he said at a fire sale it might have a value of \$8-10 million. Well that’s clearly a moving target and that’s what I think that it is. . . .

. . . I looked at the amount of debt involved. You’ve got the secured debt that could range between, in my recollection, \$15-17 million. You’ve got the voting unsecured creditors that voted in this case \$23 million. You’ve got the administrative claims in this case of an undetermined amount right now. And then you’ve got as Mr. Spencer just mentioned a moment ago, the cure claims.

So that’s a lot of debt out there. If the FCC wants to look at windfall, then they’re going to have to look at all these debts too.

⁶⁰ EB Comments at 16-19. EB criticizes the Application for citing to no case where a windfall has been permitted. Such a citation would not have been material because this issue has never been adopted as a condition for granting *Second Thursday* relief.

⁶¹ Hearing Transcript at 184.

And then when – windfall doesn't really bother me a lot. I'm not sure there is a great amount of windfall here.⁶²

The actual consideration that Choctaw is providing, however, exceeds the Judge's recollection and thoroughly undermines any concerns regarding the potential for a windfall. Choctaw effectively bid more than \$42 million for MCLM's assets during the bankruptcy process. Choctaw credit bid the amount of \$14,995,204.88 for its claims. Choctaw also assumed another \$25,855,142.24⁶³ in pre-petition claims against MCLM. Finally, pursuant to the Plan, Choctaw agreed to pay the administrative expense claims incurred during the Bankruptcy Case which currently exceed \$1,183,582.04.⁶⁴ Thus, the minimum consideration to MCLM for the Licenses is \$42,033,929.16.⁶⁵ This consideration approximates the value placed on the Licenses during the bankruptcy hearing, assuming "fire sale" pricing can be avoided.

Moreover, it would be a terrible precedent for the Commission now to interpret *Second Thursday* to preclude an acquiring party from making a profit upon the resale of licenses acquired through the bankruptcy process. Such an approach would undermine the willingness of parties to step forward in the bankruptcy process. As the Bankruptcy Court judge noted:

But I think about Choctaw and their involvement in this case. There is a lot of reason for them to be involved in this case. Number one it's sort of self-preservation at one point. But they're taking a risk. And sometimes when you take a risk, you expect a little [profit] – no telling how big the pot of gold might be at the end of the rainbow, it might be little bitty, it might be good. But *you're not out there for philanthropic effect on the economy. You're there to make a living and to make money and, I mean, I understand that and I think that's what makes our country go. So*

⁶² *Id.* at 185.

⁶³ Amount is derived from MCLM's schedules and the Bankruptcy Court claims register. The amount specifically excludes any and all claims of the DePriests or any entities they own.

⁶⁴ This amount reflects *only* the legal costs to date and was derived from Bankruptcy Court orders approving legal costs for administrative expenses.

⁶⁵ This amount does not include other consideration such as the payment of MCLM's debtor-in-possession loan.

*you consider all those factors and I hope the FCC will, because I'm considering them in my decision here today.*⁶⁶

No party has cited a case where the Commission has traced the proceeds of subsequent transactions to determine whether a recipient of *Second Thursday* relief made a profit. It is difficult to imagine a *Second Thursday* applicant who would pursue a transaction with no hope of earning a profit. Additionally, EB discussed the broad concept of a “windfall,” yet offers no clear indication of what it, the Commission, or anyone else, might consider a “windfall” profit. There is simply no basis for adopting such an approach and EB is mistaken to suggest otherwise.

III. THE PLAN WAS CONFIRMED WITHOUT ANY INSIDER DEALING INVOLVING THE DEPRIESTS

CTI alleges that “[t]he design of the bankruptcy Plan of Reorganization was also a product of [Sandra DePriest’s] substantial involvement and control”⁶⁷ and that “this is nothing more than an improper ‘inside deal’ where the DePriests provided their support for the Choctaw plan in return for (a) existing transfers of value to the DePriests, as listed above, and (b) the forbearance and potential elimination of personal guarantee obligations of the DePriests.”⁶⁸ CTI’s spurious allegations are wrong.

Ms. DePriest and MCLM *were not* the primary participants for the negotiation of the Plan as CTI alleges. In fact, because the Plan is designed to protect the interests of creditors, it was primarily the product of negotiation between Choctaw and the Official Committee of Unsecured Creditors (“Creditors’ Committee”). At the confirmation hearing for the Plan, Patrick Trammell, a witness on behalf of Choctaw, testified as follows:

⁶⁶ Hearing Transcript at 185 (emphasis added).

⁶⁷ CTI Petition at 5.

⁶⁸ *Id.*

Question by Counsel: And did you get all the terms and conditions you wanted under the Choctaw proposal worked under this plan, or was there negotiations about those points?

Answer by Mr. Trammell: There was hours of negotiations. I believe your partner, Mr. Bensinger has told me that we spent – he did, and I did with Mr. Solomon and his partner, Mr. Meek over 60 hours, you know, negotiating, you know, the unsecured creditor's part of this plan.⁶⁹

This makes sense as Creditors' Committee of Unsecured Creditors represented essentially all of the creditors with claims against MCLM; claimholders who wanted to get paid pursuant to the Plan. The DePriests both knew that they would not be able to receive a distribution under the Plan and were therefore not involved in the Plan negotiations. Simply put, their approval of the Plan was not essential to approval by the creditors or the Bankruptcy Court, so there was no "quid pro quo" needed.

The Bankruptcy Court's findings with regard to the Plan contradict CTI's fanciful allegations that there was a *quid pro quo* between the DePriests and Choctaw. The Bankruptcy Court found that "[t]he Plan has been proposed in good faith and not by any means forbidden by law."⁷⁰ The Bankruptcy Court's findings of fact belie any allegation of an impermissible deal.

Finally, CTI claims there was a back-room deal whereby creditors agreed to forbear from enforcing Mr. DePriest's guarantees in return for the DePriests' support for Choctaw's plan.⁷¹ CTI's contention is similar to the faulty logic that other courts have rejected: "If we had some

⁶⁹ Transcript of Confirmation Hearing at 199, *Maritime Communications/Land Mobile LLC*, Case No. 11-13463-DWH (Bankr. N.D. Miss. Nov. 14, 2012) ("Confirmation Hearing Transcript"). Mr. Solomon and Mr. Meek were counsel for the Creditors' Committee.

⁷⁰ *Confirmation Order* at 3.

⁷¹ CTI Petition at 6, n.16.

ham, we could have some ham and eggs, if we had some eggs.”⁷² That is, if the Commission imagines that the secured lenders agreed to forbear, and if the Commission imagines that the DePriests agreed to support the Choctaw plan, then the only conclusion that the Commission can come to is that the DePriests receive a benefit from forbearance on the guarantees. However, there is no ham and there are no eggs; the secured lenders never made a deal to forbear on their guarantees and the DePriests never made a deal to support the Choctaw plan.

IV. THE BUREAU SHOULD ASSIGN THE SITE-BASED LICENSES TO CHOCTAW EVEN IF IT FINDS THE *SECOND THURSDAY* DOCTRINE DOES NOT APPLY TO THESE LICENSES

As discussed, there are two categories of AMTS licenses subject to this application – (1) incumbent, site-based licenses; and (2) geographic, auctioned licenses. Petitioners and commenters have argued that MCLM should not be permitted to assign the incumbent site-based licenses to Choctaw because these licenses do not fall within the parameters of *Second Thursday* and because there remain outstanding questions regarding whether some of these licenses have automatically cancelled pursuant to sections 1.955(a)(2) or (a)(3) of the Commission’s rules, 47 C.F.R. § 1.955(a)(2) and (a)(3).⁷³ The petitioners and commenters, however, are wrong – there is no fatal legal impediment barring the Bureau from granting authority for MCLM to assign the incumbent, site-based AMTS licenses to Choctaw.

⁷² *Barnette v. Evans*, 673 F.2d 1250, 1252 (11th Cir. 1982).

⁷³ See EB Comments at 21-23; Havens Petition at 24, Enterprise Wireless Comments at 2-4. The question of whether the incumbent site-based licenses automatically cancelled under 47 C.F.R. §§ 1.955(a) and 80.49 was designated for hearing before the Chief Administrative Law Judge (hereinafter “Issue G” of the *HDO*) and is pending before the judge pursuant to a motion for summary decision. See *HDO*, 26 FCC Rcd at 6546, 6547; see also Maritime Communications/Land Mobile, LLC Motion for Summary Decision on Issue G, MB Docket No. 11-71 (filed May 8, 2013); Enforcement Bureau’s Response to Maritime’s Motion for Summary Decision on Issue G, MB Docket No. 11-71 (filed May 21, 2013).

MCLM and Choctaw have sought a waiver of any construction and operational requirements that might otherwise impair the ability of MCLM to transfer the Licenses to Choctaw.⁷⁴ Petitioners and commenters themselves admit that the Commission may grant the requested waiver if:

In view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.⁷⁵

There can be no doubt that these standards are met here.

A. Strict Application of Section 1.955 Would Be Contrary to the Public Interest

As described in the Application and above, strict enforcement of Section 1.955(a) could potentially punish innocent creditors by precluding MCLM from transferring the incumbent, site-based AMTS licenses to Choctaw. Such an outcome would be contrary to the fundamental policies underlying the Commission's *Second Thursday* doctrine and frustrate implementation of the Plan as confirmed by the Bankruptcy Court. This point alone is sufficient to warrant grant of the requested waiver of Section 1.955(a).

Indeed, in *LaRose*, the Court of Appeals ordered the Commission to reopen a final decision denying a broadcast license renewal application and directed the agency to consider the

⁷⁴ Application at Description of Transaction pp. 10-12.

⁷⁵ 47 C.F.R. § 1.925(b)(3)(ii). See EB Comments at 23; Havens Petition at 22. Haven's efforts to graft an "exhaustion of state remedy" requirement onto the Commission's waiver standard are wholly unsupportable. Havens Petition at 22-24. Section 1.925 of the Commission's rule on its face contains no such requirement. 47 C.F.R. § 1.925. Similarly, while the two cases cited by Havens do discuss the availability of state law remedies, nothing in either case requires that the Commission may grant a waiver only upon an exhaustion of state law remedy. Havens Petition at 23-24 (citing *FCC v. WOKO, Inc.*, 329 U.S. 223 (1946); *Connect America Fund High-Cost Universal Service Support*, 2013 FCC LEXIS 1824 (WCB rel. Apr. 30, 2013)). Moreover, there is no state law remedy available here. The Commission has exclusive jurisdiction to manage wireless spectrum and the United States Court of Appeals of the District of Columbia Circuit has exclusive jurisdiction to review Commission licensing actions. See 47 U.S.C. §§ 301, 303, and 402(b).

proposed sale and assignment of that license pursuant to the *Second Thursday* doctrine.⁷⁶ In that case, the Commission had denied a petition to terminate the pending license renewal hearing and approve the transfer and sale of said license pursuant to *Second Thursday*.⁷⁷ While the receiver was negotiating a second sale, the Commission both declined to renew the license and to consider the second transaction based on principles of administrative finality. The D.C. Circuit concluded that the Commission erred, finding:

The Commission's refusal to consider the second proposal frustrates the public interests recognized in *Second Thursday* itself. Since the license is by far the most valuable asset of Capital City, the Commission's refusal effectively deprives creditors of any significant recovery of the moneys they have advanced.⁷⁸

Section 1.955(a) should not be invoked as a bar to consideration of the assignment of MCLM's incumbent, site-based licenses to Choctaw for the same reasons – to do so would “frustrate[] the public interests recognized in *Second Thursday* itself.”⁷⁹

Further, *Carson City*, another analogous case, states:

It is well established that where, as here, a bankrupt permittee seeks an extension of time in order to assign a construction permit, and no wrongdoer would benefit thereby, the Commission has considered the equities of the creditor as an important factor in determining whether the extension was warranted. Moreover, the proposed assignee's firm commitment to build satisfies a requirement which, in the past, has also been an important factor in determining whether other matters exist which warrant favorable action on requests for extension of time to construct.⁸⁰

⁷⁶ *LaRose*, 494 F.2d at 1149.

⁷⁷ *Id.* at 1146.

⁷⁸ *Id.* at 1150.

⁷⁹ *Id.*

⁸⁰ *Carson City Broadcasting Corp. (KRWL-FM) Carson City, Nev. For Construction Permit To Replace Expired Permit, Decision*, 26 F.C.C.2d 694, 695-96 (Rev. Bd. 1970) (“*Carson City Decision*”) (internal citations omitted).

Moreover, in *Manning Telecasting*, a construction permit that had expired on multiple occasions was reinstated and extended in order to accommodate bankruptcy laws.⁸¹ The logic of these cases applies with full force here.⁸² The Wireless Telecommunication Bureau's public interest determinations with regard to the instant applications require it to give deference to and to avoid frustrating the purposes of the bankruptcy laws through rigid and formalistic interpretation and enforcement of its construction and operational rules.

B. Strict Application of Section 1.955 Would Be Inequitable

Waiver is also warranted because strict application of the permanent discontinuance rule in Section 1.955(a)(3) of the Commission's rules would be fundamentally inequitable and

⁸¹ *Manning Telecasting, Inc.*, 1986 FCC LEXIS 3974 ¶12 (MMB 1986) ("Before an extension application can be granted, a permittee must demonstrate that its failure to complete construction within the time provided was due to causes beyond its control or that there are other matters sufficient to justify the extension, 47 C.F.R. Section 73.3534(a). Where, as here, the permit is held by a fiduciary that never intends to construct the station, we do not hold it to the above standard. Rather, the Court has held that our public interest determination requires some consideration of the policies embodied in the bankruptcy laws. *LaRose v. FCC*, 494 F. 2d at 1145. In fact, our failure to defer to the bankruptcy court's determination could well undermine its jurisdiction.").

⁸² EB claims that the cases cited in the Application in support of the requested waivers are "distinguishable" because they did not involve "licenses" or *Second Thursday*. EB Comments at 24. We disagree; EB is drawing an artificial distinction between licenses and the construction authorizations involved in the cases cited in the Application. Both are Commission authorizations. With regard to EB's claim that the cited cases did not address *Second Thursday*, *Carson City* specifically cited *Second Thursday* for the proposition that "It is well established that where, as here, a bankrupt permittee seeks an extension of time in order to assign a construction permit, and no wrongdoer would benefit thereby, the Commission has considered the equities of the creditor as an important factor in determining whether the extension was warranted. See *Second Thursday Corp.*, 25 FCC 2d 112, 19 RR 2d 1199 (1970)." *Carson City Decision*, 26 F.C.C.2d at 695-96. Finally, it is well recognized that "the Commission has broad discretion to fashion remedies, including exceptions to the *Jefferson Radio* policy, where, after a hard look at the record, we find compelling reasons for doing so. Indeed, exceptions to Commission policies are generally appropriate where they further the public interest more than rigid application of the rule or policy." *RKO General, Inc., Memorandum Opinion and Order*, 3 FCC Rcd 5057, 5061 (1988).

contrary to the dictates of constitutional due process under the circumstances of this case.⁸³ Even assuming there are unresolved questions of fact regarding whether, when, and for how long operations at many of MCLM's incumbent AMTS stations were suspended,⁸⁴ it is clear from MCLM's Motion for Summary Decision that MCLM never intended to permanently discontinue operations.⁸⁵ Thus, the question under Section 1.955(a)(3) is whether operations at any of the incumbent AMTS stations were permanently discontinued because service at the stations may have been suspended for some period of time.

There is, however, no standard for determining how long an AMTS station can remain non-operational before operations are deemed to be permanently discontinued. The Commission's rules and precedent are devoid of standards for determining whether operation of an AMTS station has been permanently discontinued. The Commission itself has repeatedly acknowledged this fact, stating in the still-pending *Discontinuance NPRM* that, because of the severe consequence of permanent discontinuance, "it is imperative that our rules provide a clear and consistent definition of permanent discontinuance of operations; *they do not*."⁸⁶ Later in the

⁸³ Grant of the requested waiver would not imply that bankruptcy standing alone would be a basis for waiving the Commission's construction and operational requirements as Enterprise Wireless suggests. See Enterprise Wireless Comments at 4. This waiver request is made in the relatively rare circumstance in which the Commission's rules lack a standard for determining how long service at an AMTS station may be suspended before the license automatically cancels, pursuant to Section 1.955(a)(3). Moreover, there is a pending rulemaking to resolve this omission, so the circumstances will not be likely to be repeated in the future. See Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services, *Notice of Proposed Rulemaking and Order*, 25 FCC Rcd 6996 (2010) ("*Discontinuance NPRM*").

⁸⁴ MCLM has filed a motion for summary decision on Issue G arguing that there are no substantial and material questions of fact whether the incumbent site-based AMTS licenses automatically cancelled pursuant to Sections 1.955(a) and 80.49 of the Commission's Rules. See MCLM Motion for Summary Decision.

⁸⁵ See *id.* at 9-12.

⁸⁶ *Discontinuance NPRM*, 25 FCC Rcd at 7017 (emphasis supplied).

same order, the Commission acknowledged that “Part 80 [of the Commission’s rules], which governs stations in the Maritime Services, does not currently define permanent discontinuance of operations.”⁸⁷ The Bureau had recognized this problem in an earlier decision, stating: “Part 80, unlike some rule parts, does not set forth a specific period of non-operation after which the operation will be deemed to have permanently discontinued.”⁸⁸

Absent any clear indication of what does and does not constitute permanent discontinuance for AMTS licenses, fundamental principles of due process preclude the Commission from enforcing that rule to subject MCLM to the death penalty of losing its licenses. In *Trinity Broadcasting*, the United States Court of Appeals for the District of Columbia Circuit reversed the Commission’s decision to deny a television license renewal application on the grounds that the applicant did not have adequate notice as to how the Commission was interpreting its minority preference regulations.⁸⁹ The court explained that:

Because “due process requires that parties receive fair notice before being deprived of property,” we have repeatedly held that “in the absence of notice – for example, where the regulation is not sufficiently clear to warn a party about what is expected of it – an agency may not deprive a party of property by imposing civil or criminal liability.”⁹⁰

Thus, the court ruled that the Commission may deprive a regulated entity of a license only if:

... “by reviewing the regulations and other public statements issued by the agency, a regulated party acting in good faith would

⁸⁷ *Id.* at 7022.

⁸⁸ Northeast Utilities Service Company To Modify License for Station WQEJ718, *Order*, 24 FCC Rcd 3310, 3313 (WTB 2009) (“*Northeast Utilities*”).

⁸⁹ *Trinity Broadcasting of Florida, Inc. v. FCC*, 211 F.3d 618 (D.C. Cir. 2000) (“*Trinity Broadcasting*”).

⁹⁰ *Id.* at 628 (alterations in original) (quoting *General Elec. Co. v. EPA*, 53 F.3d 1324, 1328-29 (D.C. Cir. 1995) (“*GE*”).

be able to identify, with ascertainable certainty, the standards with which the agency expects parties to conform. . . .”⁹¹

The Supreme Court recently reconfirmed these principles in *Fox Television Stations*. In that case, the Court found that the Commission violated broadcast networks’ due process rights by failing to give them fair notice that a fleeting expletive or a brief shot of nudity could be actionably indecent.⁹² The Court explained that:

[The] requirement of clarity in regulation is essential to the protections provided by the *Due Process Clause of the Fifth Amendment*. . . . A conviction or punishment fails to comply with due process if the statute or regulation under which it is obtained “fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.”⁹³

The Court went on to state that:

Even when speech is not at issue, the void for vagueness doctrine addresses at least two connected but discrete due process concerns: first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way.⁹⁴

Given the profound due process implications of the lack of clear standards governing permanent discontinuance for AMTS licenses, a waiver of Section 1.955(a) to avoid automatic termination of MCLM’s incumbent, site-based licenses is wholly warranted. Indeed, the Bureau previously waived Section 1.955(a)(3) in a case involving the assignment of certain Personal Communications Services (“PCS”) licenses for precisely these reasons.⁹⁵ Like the instant case,

⁹¹ *Id.* at 628 (quoting *GE*, 53 F.3d at 1329).

⁹² *FCC v. Fox Television Stations*, 132 S.Ct. 2307 (2012) (“*Fox Television Stations*”).

⁹³ *Id.* at 2317 (citations omitted).

⁹⁴ *Id.* (citations omitted).

⁹⁵ Letter from Renée Crittendon, WTB to Cheryl Tritt, Counsel for Monet Mobile Networks, Inc. (Oct. 20, 2004) (released in the Edmund J. Wood, Chapter 11 Trustee for Monet Mobile

the PCS case involved the assignment of licenses in the context of a bankruptcy, where service at the subject licenses had been suspended, and the rules lacked any definition of discontinuance of service.⁹⁶ The Bureau waived section 1.955(a)(3) to allow the bankrupt licensee's "successor(s)-in-interest a period of time [one-year] within which it may re-initiate service under each of the licenses, and during which the stations associated with the [bankrupt entity's] licenses will not be considered to have permanently discontinued operations."⁹⁷ The Bureau found that:

Given that the Commission's rules provide no specific timeframe for when PCS services are considered to have been permanently discontinued, we believe it is appropriate to grant the Trustee's request for a waiver of Section 1.955(a)(3), to the extent applicable, for a period of one year from the date of this letter
*In the absence of a specific rule or precedent defining "permanently discontinued" for PCS, automatic termination of . . . licenses, in this instance, is neither equitable or in the public interest.*⁹⁸

Enforcement of Section 1.955(a)(3) to block assignment of MCLM's incumbent, site-based licenses to Choctaw would be "neither equitable nor in the public interest" for the same reasons.

EB's efforts to cobble together a standard for permanent discontinuance from disparate Commission precedent and rules from different services are not sufficient to justify denying the requested waiver.⁹⁹ Both the Commission and the Wireless Telecommunications Bureau have stated that no such clear standard exists.¹⁰⁰ To the contrary, the Commission recognizes that it

Networks, Inc., Petition for Declaratory Ruling or, Alternatively, a Partial Waiver of Section 1.955(a)(3) of the Commission's Rules proceeding) (attached as Exhibit D).

⁹⁶ *Id.* at 2.

⁹⁷ *Id.* at 3.

⁹⁸ *Id.* at 2 (emphasis added).

⁹⁹ EB Comments at 26-29.

¹⁰⁰ See *supra* Discontinuance NPRM and Northeast Utilities.

has adopted inconsistent and differing standards with regard to some radio services¹⁰¹ and established no standards for other services, including Part 80 services such as AMTS.¹⁰² It is simply not credible for EB now to suggest that there is a clear standard for permanent discontinuance of AMTS licenses of which MCLM, or any AMTS licensee should have been aware.

EB's assertion that "MCLM had fair notice that by not operating its AMTS site-based stations for multiple years it risked automatic termination of these licenses" similarly lacks merit.¹⁰³ The Commission itself has acknowledged that its conflicting and inconsistent standards can easily lead licensees to conclude reasonably that they "could discontinue service for a long period without fear of automatic license termination."¹⁰⁴ Moreover, EB's standard of "not operating" for "multiple years"¹⁰⁵ lacks the "precision and guidance"¹⁰⁶ due process requires. In EB's view, it should be self-evident that a suspension of service for multiple years is permanent discontinuance, but this conclusion is not compelled by logic; "multiple years" could mean five years, ten years, or twenty years, just as easily as it could mean two years, and the Commission has provided no basis for judging which would be correct. Without more, a standard of "multiple years" is woefully inadequate.

¹⁰¹ *Discontinuance NPRM*, 25 FCC Rcd at 7017-18. See also 47 C.F.R. § 22.317 (which governs operations in the paging and other services and provides that "any station that has not provided service to subscribers for 90 continuous days is considered to have been permanently discontinued. . ."); *id.* § 90.157(a) (which governs operations in most Part 90 services and provides that "any station which has not operated for one year or more is considered to have been permanently discontinued.").

¹⁰² *Discontinuance NPRM*, 25 FCC Rcd at 7017-18.

¹⁰³ EB Comments at 26.

¹⁰⁴ *Discontinuance NPRM*, 25 FCC Rcd at 7018.

¹⁰⁵ EB Comments at 6.

¹⁰⁶ *Fox Television Stations*, 132 S.Ct. at 2317.

Apparently recognizing this flaw, EB goes on to argue that existing AMTS cases make clear to a reasonable AMTS licensee that: it must “maintain operations at its stations for the licenses to remain valid”; it “could not cease operations of its stations indefinitely without that license terminating for permanent discontinuance”; “the Commission would look to such factors as whether the licensee maintained equipment at the licensed location, whether electric power was being supplied to equipment at the licensed location, and the licensee’s due diligence in re-commencing operations at the licensed location or an alternative location”; and “the Commission would consider how many years the stations had not been operating and why operations had been discontinued.”¹⁰⁷ Tellingly, these cases do not establish a fixed period of time beyond which a permissible suspension of service at a given station becomes permanent discontinuance such that the station license is automatically cancelled.

EB effectively is reading these cases as providing a list of factors that the Commission might reasonably consider and balance in a case-by-case determination of whether operations have been permanently discontinued at a given station. This is not how Section 1.955(a)(3) operates, however. Section 1.955(a)(3) is binary – the license cancels automatically when operations are permanently discontinued, and permanent discontinuance is defined in the “Commission authorization or the individual service rules.”¹⁰⁸ Nowhere does the license or rule suggest that permanent discontinuance will be defined on a case-by-case basis based on a

¹⁰⁷ EB Comments at 29 (citing *Mobex Network Services*, 19 FCC Rcd 24939 (WTB 2004); *Paging Systems, Inc.*, 21 FCC Rcd 7225 (WTB 2006); *Mobex Network Services* 22 FCC Rcd 665 (WTB 2007); *Mobex Network Services*, 22 FCC Rcd 1311 (WTB 2007); *Northeast Utilities*, 24 FCC Rcd at 3310; *Mobex Network Services*, 25 FCC Rcd 3390 (2010)). None of the cases cited by EB establish a clear time frame for determining when an AMTS authorization is permanently discontinued, however. Notably, all of these cases predate the *Discontinuance NPRM* in which the Commission expressly recognized that no such standard exists and the most recent *Mobex Networks Services* remains pending on reconsideration.

¹⁰⁸ 47 C.F.R. § 1.955(a)(3) (“The Commission authorization or the individual service rules govern the definition of permanent discontinuance for purposes of this section.”).

balancing of factors identified by EB. To the contrary, the rule is intended to operate “without specific Commission action.”¹⁰⁹ The lack of a clear definition of permanent discontinuance in the AMTS rules or Commission precedent is thus fatal to EB’s position.

C. Waiver of Section 1.955(a) Will Serve the Public Interest

Parties also oppose waiver of Section 1.955(a) arguing that waiver would be contrary to the public interest by allowing AMTS spectrum to lie fallow and not be used to provide service to the public.¹¹⁰ These petitioners and commenters are again wrong. As demonstrated in the Application and above, assignment of the MCLM Licenses, including the incumbent, site-based licenses to Choctaw will serve the public interest, convenience, and necessity on several levels ranging from making the innocent creditors whole to expediting the provision of crucial services to the public.¹¹¹

To begin, the Plan, as confirmed by the Court, is contingent upon Choctaw acquiring all of the Licenses and taking all steps necessary to recover the value of the Licenses for the creditors. In part, this will be accomplished by completing the pending transactions with several entities.¹¹² As dictated in the Plan, the Liquidating Agent is entitled to proceeds from Choctaw’s sale of Licenses in order to pay the unsecured creditors.

This process, however, not only will serve to make innocent creditors whole, but also will expedite putting this spectrum to use providing services that, among other things, will (i) enhance public safety through the implementation of positive train control on tracks carrying

¹⁰⁹ *Id.*

¹¹⁰ See EB Comments at 26-27; Enterprise Wireless Comments at 2-4.

¹¹¹ See Application at Description of Transaction pp. 12-15.

¹¹² There are several applications pending with the Commission to assign MCLM spectrum to various entities. See FCC, ULS File Nos: 0004030479, 0004144435, 0004193328, 0004310060, 0004315013, 0004430505, 0004507921, 0004526264, 0004636537, 0004604962, 0005591095, and 0005224980 (“Pending Applications”).

tens of thousands of commuters daily, (ii) facilitate the deployment of smart grid technology, (iii) increase economic efficiencies for companies involved in oil and gas extraction and transport, and (iv) provide access to spectrum for rural operations.¹¹³ Entities that have entered into agreements with MCLM for the assignment of AMTS spectrum desperately need said spectrum, and have waited years for access to this spectrum to support critical infrastructure communications functions. The critical functions contemplated by these entities include Supervisory Control and Data Acquisition related to the operation of pipelines and liquefied natural gas facilities in the oil and gas industry as well as smart grid and other critical infrastructure industry functions in the electric utility industry. For electric utilities, control and operations of transmission and distribution infrastructure are mandated by the Federal Energy Regulatory Commission to achieve nationwide stability and system reliability. Most of the operations are conducted on a private (noncommercial) basis and are essential to the safe and efficient operation of inherently dangerous, public-safety related critical infrastructure industry businesses previously recognized as such by the Commission.¹¹⁴ By granting the instant application the Commission will advance the process of clearing the path for these entities that have been waiting years to access use the AMTS spectrum, including some of the incumbent, site-based AMTS licenses.

The public interest benefits, however, do not end with these transactions. Choctaw has committed to the Commission that it will do everything necessary to comply with the Commission's Rules while at the same time protecting the interests of the creditors.¹¹⁵ Choctaw is prepared to make the investments necessary to resume active operations for many licenses as

¹¹³ See Application at Description of Transaction pp. 13-14.

¹¹⁴ *Id.* at 14.

¹¹⁵ *Id.* at 13.

quickly as possible.¹¹⁶ This will return the spectrum to service far more expeditiously than having the Commission reclaim the licenses and relicense the spectrum at some future date, as proposed by Enterprise Wireless.¹¹⁷ Choctaw's understanding of its obligations as a Commission licensee is perhaps best summarized in Mr. Patrick Trammell's testimony before the Bankruptcy Court: "[W]e will be a good corporate citizen, that's the way we run our other businesses, and that's what we're going to do, and we are going to get everybody paid back."¹¹⁸

In sum, whether part of *Second Thursday* or as separate relief, the Commission should waive its construction and permanent discontinuance rules to the extent necessary to allow for the assignment of MCLM's incumbent, site-based licenses to Choctaw. Strict enforcement of the automatic cancellation rules in Section 1.955(a) would be inequitable and contrary to the public interest, while grant of a waiver to permit MCLM to assign all of the Licenses, including the incumbent, site-based licenses to Choctaw, will serve the public interest by making the innocent creditors whole and expediting the provision of crucial services to the public.

V. PENDING APPLICATIONS SHOULD BE GRANTED EXPEDITIOUSLY PURSUANT TO FOOTNOTE 7 OF THE *HDO*

Second Thursday relief is not the only avenue available for the Commission to begin assigning the MCLM spectrum to entities that are eager to utilize it and put it to immediate use. In the unlikely event the Commission does not grant full relief pursuant to the *Second Thursday* doctrine the Commission can still proceed with grants pursuant to Footnote 7 of the *HDO*. The Commission has before it several applications to assign MCLM spectrum to various entities that

¹¹⁶ *Id.*

¹¹⁷ See Enterprise Wireless Comments at 3.

¹¹⁸ Transcript of Hearing at 216-217, *Maritime Communications/Land Mobile, LLC*, Case No. 11-13463-DWH, (Bankr. N.D. Miss. Nov. 14, 2012) (emphasis added). Excerpts are attached as Exhibit A.

are subject to the *HDO*.¹¹⁹ In recognizing the safety-of-life considerations underlying Southern California Regional Rail Authority's ("SCRRA") proposed acquisition of spectrum from MCLM, and the statutory mandate surrounding positive train control, the Commission in Footnote 7 of the *HDO* invited SCRRA and MCLM to submit showings in support of removal of their applications "from the ambit" of the hearing.¹²⁰ SCRRA and other entities that have pending applications to purchase or lease MCLM spectrum timely responded to this invitation and formally requested severance from the Hearing but have seen no action on these requests in over two years.¹²¹

Second Thursday relief and relief pursuant to Footnote 7 in the *HDO* do not have to be mutually exclusive, and both would be a positive first step in fulfilling the Plan and making whole the innocent creditors. Footnote 7 and *Second Thursday* each provide a mechanism by which the Commission can resolve the outstanding issues in these applications, remove them from the hearing and put the spectrum into the hands of those entities that have been waiting in excess of three years to complete the desired transactions. If the Commission decides to bifurcate this proceeding or otherwise assign only those licenses not subject to Issue G, the

¹¹⁹ FCC, ULS File Nos. 0004030479, 0004144435, 0004193328, 0004310060, 0004315013, 0004430505, 0004507921, 0004526264, 0004636537, and 0004604962. In addition there are pending applications to lease and assign certain spectrum to Shenandoah Valley Electric Cooperative (File Nos. 0005591095 and 0005224980) that are not subject to the hearing but that should be granted as well.

¹²⁰ *HDO*, 26 FCC Rcd at 6523 n.7

¹²¹ See Showing Pursuant to Footnote 7 of Southern California Regional Rail Authority, EB Docket No. 11-71 (filed May 9, 2011); Supplement to Showing Pursuant to Footnote 7 of Southern California Regional Rail Authority, EB Docket No. 11-71 (filed June 21, 2011) (for File Nos. 0004153701 and 000414435) and Petition for Reconsideration of by Dixie Electric Membership Corporation, Inc. Atlas Pipeline Mid-Continent LLC, Enbridge Energy Company, Inc., EnCana Oil & Gas (USA) Inc., Jackson Count Rural Electric Membership Cooperative, and Denton County Electric Cooperative, Inc. d/b/a CoServ Electric, EB Docket 11-71 (filed May 19, 2011) (for FCC, ULS File Nos. 0004030479, 0004507921, 0004526264, 0004430505, 0004604962, 0004310060 and 0004636537).

Commission should expeditiously grant all of the Pending Applications to assign or lease spectrum from MCLM to the Proposed Licensees pursuant to Footnote 7. Grant of these Pending Applications via Footnote 7 supports the mechanism of *Second Thursday* set forth in the Plan by allowing for the closing of transactions subject to the Pending Applications and beginning the payment of the debts owed by MCLM to its creditors. A portion of the proceeds from the sale of spectrum would, pursuant to the Plan, flow to the Liquidating Agent who in turn would distribute the assets according to the approved bankruptcy waterfall.

Choctaw, MCLM and each of the proposed assignees have demonstrated the public interest benefits of granting the Pending Applications.¹²² It is in the public interest to put the MCLM spectrum subject to the pending Application into the hands of those entities that provide crucial service to the public as soon as possible.

CONCLUSION

For the foregoing reasons, the Commission should assign all of the Licenses to Choctaw and the hearing should be terminated pursuant to the *Second Thursday* doctrine.

Respectfully submitted,

CHOCTAW TELECOMMUNICATIONS, LLC
CHOCTAW HOLDINGS, LLC

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May 30, 2013

¹²²See CII Companies' Comments, at 7-11; Shenandoah Valley Comments at 2-3; SCRRA Comments at 6-8.

ATTACHMENT F

SUPPLEMENTAL DECLARATION

I, Patrick Trammell, hereby declare that I have reviewed that attached Opposition to Petition to Deny and Reply Comments and that, to the best of my personal knowledge, all factual statements and representations contained therein are true and correct to the best of my knowledge and belief. In particular:

- Sandra and Donald DePriest will receive no compensation or other direct benefit as a result of the proposed transaction and will not receive proceeds from any future sales and assignments of the Licenses by Choctaw to third parties;
- Sandra and Donald DePriest have not had, nor will they have, any role with Choctaw Telecommunications, LLC or Choctaw Holdings;
- Sandra and Donald DePriest will play no future role with respect to the Licenses;
- Neither Sandra and Donald DePriest nor any entity with which they are affiliated will have any involvement with the Licenses through any future sales and assignments of the Licenses by Choctaw to third parties;
- Critical RF, Inc. will not use any of the Licenses as long as Choctaw is the licensee of the Licenses; and
- Choctaw will not sell, lease, assign, or otherwise cause a transfer of any of the Licenses to Critical RF, Inc.

I declare under penalty of perjury that the foregoing is true and correct.


Patrick Trammell
Managing Member

Choctaw Telecommunications, LLC
Choctaw Holdings, LLC

Dated: May 28, 2013